# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1956

# No. 276

GENERAL ELECTRIC COMPANY, PETITIONER,

*vs.*

LOCAL 205, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (U. E.)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

## INDEX



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[fol. 1]

# IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

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Clerk's Certificate to following transcript omitted in printing.

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LOCAL 205, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE),

*v.*

GENERAL ELECTRIC COMPANY

(Telechron Department, Ashland, Massachusetts),

Civil Action No. 54-933-A.

DOCKET ENTRIES

1954

December 16. Complaint filed, summons issued.

December 27. Summons returned by pltf. attorney, service having been accepted.

1955

January 4. Stipulation and Order for extension of time for filing answer to and including January 17, 1955.

January 17. Defendant's motions to strike, to dismiss or for more definite statement filed with cert. of service.

February 4. Amendment to complaint filed.

February 21. Aldrich, J. Deft. motion to strike matter relating to damages,

February 21. Aldrich, J. Deft. motion to strike request for specific performance.

February 21. Aldrich, J. Deft. motion to dismiss.

February 21. Aldrich, J. Deft. motion for more definite statement, under advisement after hearing.

February 24. Aldrich, D. J. Memorandum filed. "The plaintiff may have until March 4, to file and amendment or a new complaint." Copies to counsel.

[fol. 2] 1955

March 3. Motion for extension of time for filing amended complaint to and including March 11th filed and assented to.

March 7. Aldrich, D. J. Motion for extension of time for filing amended complaint allowed.

March 10. Stenographic Record, of February 21st filed.

March 11. Amended Complaint for Specific Performance of Contract to Arbitrate and for Damages filed, with cert. of service.

March 22. Stipulation and Order filed regarding time in which the deft. may file its answer, or other pleading. Time extended to and including March 28th. Allowed by Aldrich, D. J.

Mar. 28. Defendant's answer filed with cert. of service. Defendant's motion to strike request for specific performance, filed with cert. of service.

March 28. Aldrich, D. J. Opinion filed.

April 22. Plaintiff motion for Final Judgment on Grant of Defendant's Motion to Strike Request for Specific Performance. Certificate of Service attached.

April 27. Aldrich, J. Pltf. motion for final judgment on grant of deft. motion to strike request for specific performance under advisement after hearing.

April 27. Aldrich, J. Memorandum filed. Counsel notified.

April 27. Aldrich, J. Order entered. After hearing, and in accordance with the Opinion handed down March 28, 1955 it is ordered that deft's motion to strike the pltf's prayer for an injunction is granted for want of jurisdiction, and a final judgment is entered dismissing claims for equitable relief.

April 27. Motion to amend amended Complaint, assented to, filed.

[fol. 3] 1955

April 27. Aldrich, D. J. Order of Dismissal entered for want of jurisdiction.

April 27. Notice of appeal filed by the plaintiff.

April 28. Copy of notice of appeal mailed to Francis J. Vass, Esq., 50 Federal St., Boston.

April 28. Original papers delivered to the U. S. Court of Appeals.

IN UNITED STATES DISTRICT COURT

COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO ARBITRATE AND FOR DAMAGES.—Filed December 16, 1954

Count I

1. Plaintiff is a voluntary unincorporated labor association which represents the employees of the defendant Company, employed in its Telechron Department plant at Ashland, Massachusetts in an industry affecting commerce. Plaintiff maintains its principal offices in Ashland, Massachusetts, where its duly authorized officers and agents are engaged in representing and acting for employee members.

2. Defendant is a corporation organized under and by virtue of the laws of the State of New York and doing business at its Telechron Department plant in Ashland, Massachusetts. It is the employer of the employees who are members of plaintiff Union, and is engaged in interstate commerce.

3. This action arises under the provisions of Section 301(a), 301(b) and 301(c) of the Labor Management Rela- [fol. 4] tions Act of 1947 (29 U.S.C.A. Sections 151, 185(a); 185(b) and 185(c)).

4. On June 29, 1953, plaintiff and defendant entered into a collective bargaining contract, which continued in effect until June 10, 1954, was modified on June 14, 1954, and, as modified, is in effect until September 27, 1955. Copies of these contracts are attached hereto and made a part hereof as Exhibits A and B and are referred to hereinafter as the contract. The contract provides in Article XIII thereof:

> "1. Any matter involving the application or interpretation of any provisions of this Agreement which shall not include a matter involving establishment of wage rates, general increases or production standards may be submitted to arbitration by either the Union or the Company. The party desiring to arbitrate shall give the other written notice of its intention to arbitrate within thirty (30) days after the decision in Step 4 of Article XII is rendered unless this time limit has been extended in writing signed by both parties.

2. If the Company and the Union are unable to agree on the selection of an arbitrator within fifteen (15) days the Federal Mediation and Conciliation Service shall be asked to submit a list or lists of arbitrators from which one will be agreed upon.

3. The arbitrators shall hear and determine the dispute or controversy as promptly as possible and shall issue findings or award a decision in writing. The decision of the arbitrator shall be final, binding and conclusive upon the parties. Such decision shall be within the scope and terms of this Agreement and the authority of the arbitrator shall be limited to the interpretation, application, or determining compliance with the provisions of this Agreement but he shall have [fol. 5] no authority to add to, detract from, or in any way alter the provisions of this Agreement.

4. The cost of any arbitration shall be borne equally between the Company and the Union except each party shall pay the expenses of all witnesses called by it.

5. It is specifically agreed that no provision of this Agreement or other Agreements between the parties shall be subject to arbitration pertaining in any way to the establishment, administration, interpretation, or application of Insurance or Pension Plans in which the Employees are eligible to participate."

5. On April 2, 1954 plaintiff filed a written grievance with defendant that for a considerable time prior thereto employee Joseph Boiardi had been paid at a lower rate of pay than called for in his job classification; and that the defendant had not properly applied the contract in its payments to Boiardi. Thereafter plaintiff duly processed the said grievance in accordance with the grievance procedure of the said contract, without reaching agreement with defendant.

6. On June 10, 1954, plaintiff duly notified defendant in writing that, in accordance with Article XIII of the contract, it requested submission to arbitration of the Joseph Boiardi grievance; that it considered the Company's action to be in violation of the contract; and that it nominated a certain arbitrator.

7. On June 16, defendant notified plaintiff that it was

unwilling to arbitrate this matter. Thereafter, despite other requests by plaintiff to submit the matter to arbitration, defendant continued to refuse and still refuses to submit either the arbitrability of the grievance or the grievance itself to arbitration, in violation of the said contract, and to carry out its agreement to arbitrate as set forth in Article XIII of said contract.

[fol. 6] Count II

1. Paragraphs 1 through 4 of the First Count are hereby realleged and made a part of this Count.

2. On August 13, 1954, plaintiff filed a written grievance with defendant alleging that employee Charles Armstrong had been discharged arbitrarily and duly processed the said grievance procedure under the said contract, without reaching agreement with defendant.

3. On September 24, 1954, plaintiff duly notified the defendant that it was submitting to arbitration the Charles Armstrong grievance as a matter of application of the contract and would shortly submit the name of a proposed arbitrator and form of the question.

4. On September 30, 1954, defendant notified plaintiff that it refused to submit the said grievance to arbitration; and thereafter, despite renewed requests by plaintiff, defendant continued to refuse, and still refuses, in violation of said contract, to submit either the arbitrability of the grievance or the grievance itself to arbitration and to carry out its agreement to arbitrate as set forth in Article XIII of the said contact.

5. By reason of defendant's aforesaid refusal to carry out its agreement to arbitrate the said Boiardi and Armstrong grievances, and its aforesaid violation of the collective bargaining contract, plaintiff has been damaged in its collective bargaining relationship and its ability to represent and act as collective bargaining representative for employees and has been required to expend sums of money, and put to trouble and expense, which would not have been necessary, but for the aforesaid violations by the Company of the said contract.

Wherefore, plaintiff demands that defendant be required specifically to perform its agreement to arbitrate by sub-

mitting to arbitration the grievances involving Joseph Boiardi and Charles Armstrong, in accordance with Article [fol. 7] XIII of the said contract, (2) damages in the sum of three thousand dollars ($3,000) (3) if specific performance is not granted, plaintiff have judgment against defendant in the sum of ten thousand dollars ($10,000).

By its attorney, (S.) Allan R. Rosenberg, 10 Tremont Street, Boston 8, Massachusetts.

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# AGREEMENT

This Agreement made the twenty-ninth day of June, 1953, between Telechron Department of the General Electric Company (referred to as Company) and Local 205 U.E.R.M.W.A. (referred to as Union).

WHEREAS, the parties hereto desire to establish the standard of hours of labor, rates of pay, and other working conditions at the plants of the Company in Ashland, Massachusetts, and to regulate the mutual relationship between the parties hereto with a view to securing harmonious cooperation between the parties. Now, in consideration of the premises and the mutual covenants and agreements herein contained, the parties do hereby covenant and agree as follows:

## ARTICLE I

## COLLECTIVE BARGAINING

1. The word "Employee" (Employees) as herein used will refer to the Company's hourly-rated production and maintenance employees at the Ashland Plants as set forth in the certification of the National Labor Relations Board in Case No. R-1348, including shipping and receiving clerks and group leaders, but excluding executives, foremen, assistant foremen, sub-foremen, factory, office, and administrative clerical employees, time study men, and all other individuals having authority, in the interest of the Company to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

2. The Company hereby recognizes the Union as the exclusive bargaining agent of its Employees as defined in the preceding paragraph for the purpose of collective bargaining.

3. The Union will in no way restrict the Employees in their efforts to improve the quality of work performed but to encourage the Employees to perform loyal and efficient work and will use its influence to promote the sale of the Company's products and will urge its members to assist in increasing production and lowering costs.

4. Neither the Union nor its members, agents, or representatives will intimidate or coerce Employees

at any time nor will it solicit members or conduct any Union activities during working hours other than those of collective bargaining and the handling of grievances in the manner provided.

5. The Company will not interfere with the right of Employees to become members of the Union nor will it use coercion, discrimination or restraint against any member of the Union on account of such membership.

6. The Company shall not give financial aid to or otherwise support any labor organization. This shall not be construed to prevent the normal exchange of information between the parties hereto in the normal course of collective bargaining such as the weekly report of personnel actions given to the Business Agent.

## ARTICLE II

## CHECK-OFF

1. The Company agrees to deduct from the first pay of each month the monthly Union membership dues of all Employees who individually and voluntarily authorize the Company to make such deductions in writing. Until such written authorization has been revoked, the Company will continue to make the authorized deductions and remit them monthly to the Treasurer of the Union. The authorization for such Union dues deductions shall be in the following form:

"I hereby authorize and direct Telechron Dept., General Electric Co., to deduct from the first pay of each calendar month hereafter earned by me, the sum

of as the monthly membership dues of Local 205, United Electrical, Radio and Machine Workers of America. The sum so deducted shall be remitted to the Treasurer of the Union not later than the end of the month in which the deduction has been made.

This authorization may be revoked by me upon thirty (30) days written notice to Telechron Dept., General Electric Co., sent by registered letter, with a copy thereof mailed at the same time to Local 205 (UE) by individual registered letter.

Clock No. Date Signature of Employee"

2. The Union, may, upon thirty (30) days notice in writing to the Company, cancel the authorization of any individual Employee, group of Employees or all Employees.

## ARTICLE III

## SERVICE CREDITS

1. Eligibility of an Employee to participate in certain benefits shall be predicated upon the length of service accumulated by the Employee.

2. An Employee shall accumulate one weekly service credit for each week or part of a week worked. The total of such accumulated service credits, plus those allowed in accordance with paragraph 4, expressed in years and weeks, shall constitute an Employee's length of service, except as provided in paragraph 3 below.

3. Length of service for an Employee who was on the payroll as of May 1, 1939, will be the number of weekly service credits accumulated after that date as stipulated in paragraph 2 above, plus length of service as of May 1, 1939, calculated as follows:

The number of years and weeks the Employee was on the payroll minus the excess of all absences which exceeded six consecutive months.

4. Service credits will be allowed for the following periods of time not worked and such absence will not constitute a break in service except as stipulated in paragraph 6 below:

a. Absence due to personal illness when covered either by a doctor's certificate or an insurance claim and provided that the Employee so absent keeps the Plant Manager informed monthly.

b. Regular vacations.

c. Military or naval service.

d. Jury duty.

5. Service credits will not be allowed for the following periods of time not worked but such absences will not constitute a break in service except as stipulated in paragraph 6 below:

a. Layoff

Layoff because of reduction in force. An Employee so absent may accept temporary employment elsewhere.

b. Leave of Absence

Leave of absence without pay, not exceeding three months for any reason other than to seek employment elsewhere, may be granted in individual cases

at the discretion of the Plant Manager. In every such case leaves must be arranged in advance, reasons for leave given in writing, and a definite time established for the Employee's return to work.

6. Break in Service

Service shall be broken when an Employee:

a. Leaves voluntarily or is discharged.

b. Absents himself from work for two consecutive weeks or longer without satisfactory explanation.

c. Fails to keep the Plant Manager informed monthly, or is absent for a continuous period of more than twelve months because of personal illness.

d. Is not re-employed after a layoff because of reductions in force when such absence exceeds twelve consecutive months. Laid off, is notified within a year that he may return to work but fails to do so or give satisfactory explanation within two weeks of such notification.

7. If an Employee after a break in service is re-employed, he shall be considered a new Employee and his service shall be accumulated from the date of such re-employment, except if the Company re-employs an Employee whose service has been broken because of layoff for lack of work for more than one year, such Employee shall have his or her accumulated service credits restored, if such layoff did not exceed three years and if his length of service at the time of his layoff was greater than the total length of such layoff.

8. The Company will provide the Union with a copy of the service credit list within 30 days of its compilation.

## ARTICLE IV

## HOURS

1. The regular workweek for Employees shall be 5 days, 8 hours per day from Monday to Friday inclusive.

2. An Employee's workday is the 24-hour period beginning with his regularly assigned starting time of his workshift, and his day of rest starts at the same time on the day or days he is not scheduled to work. His workweek starts with the start of his regularly assigned work period on Monday of that workweek. Upon commencing work on Monday at a newly-assigned starting time, an Employee's preceding workweek shall end and the preceding day of rest of any Employee who has had a 24-hour period of rest prior to the newly-assigned starting time shall also end.

3. Exceptions to the above two paragraphs may be made to meet production requirements or unusual conditions.

4. Any Employee working overtime any one day shall not be given time off to offset overtime.

5. Employees shall be given a full ten minutes rest period in every four hours except when production schedules require a different arrangement.

6. The Company shall advise the Union when production or shipping requirements make it necessary for the Company to increase or decrease the working schedule of any department.

7. Casual overtime shall be arranged for between a member of supervision and the Employee or Employees necessary. Such overtime shall be divided as equally as proficient operations permit among the Employees who are performing similar work in the group.

8. No Employee shall work before or after his regular working schedule unless such work has been first authorized by the Company, in which event the Employee shall be compensated for such work.

## ARTICLE V

## HEALTH AND SAFETY

1. In order to minimize accidents and health hazards the Company will continue to provide safety devices, guards, systematic safety inspections, and medical service.

## ARTICLE VI

## VACATIONS

1. Service Requirements

a. Hourly-rated Employees will be granted one (1) week of vacation with pay after completion of one (1) year of accumulated service credits, two (2) weeks after completion of five (5) years of accumulated service credits, and three (3) weeks after completion of fifteen (15) years of accumulated service credits.

b. Hourly-rated employees who have more than one (1) year of accumulated service credits but less

than five (5) years of accumulated service credits will receive additional days of vacation as follows:

over two years but less than three years—1 day

over three years but less than four years—2 days

over four years but less than five years—3 days

2. Holiday in Vacation Period

When the vacation period includes one of the seven paid holidays listed in Section 2 of Article X an additional day of vacation will be granted with pay if the holiday occurs during the normally scheduled workweek of the Employee. The extra day will, at the discretion of the Plant Manager, be scheduled immediately before or after the vacation period. Observed holidays occuring during an Employee's vacation period will be considered as part of his vacation time.

3. Leave of Absence

When an Employee who is qualified for a vacation allowance is granted a leave of absence, the vacation pay allowance for which he is qualified may be paid, if the Plant Manager approves.

4. Basis of Payment

a. Vacations for all qualified Employees will be paid at straight-time rates on the basis of the standard working schedule of five days, forty hours per week, except as noted in Paragraphs b. and c. below.

b. Employees, such as cleaners or others on special short shifts, will receive vacation allowances based on actual scheduled hours per week.

c. Vacation payments to Employees working extended schedules will be as follows:

(1) Employees working an average of more than forty hours during the eight weeks immediately preceding the last week worked prior to commencement of vacation will be paid on the following basis:

(i) If the average number of hours worked per week during this eight-week period was more than 40 hours but less than 42 hours, payment will be made on the basis of 40 hours.

(ii) If the average number of hours worked per week during this eight-week period was 42 or more but less than 48, payment will be made for the nearest number of such average hours (i.e. if the average is 43.6 hours, payment will be made for 44 hours). If an Employee is entitled to any additional days of vacation, payment for the additional days will be made at the rate of not more than eight hours per day.

(iii) If the average number of hours worked per week during this eight-week period was 48 hours or more, payment will be made for 8 hours.

(iv) To qualify for more than 40 hours' pay, an Employee must have worked an average of 42 or more hours. In other words, absences during the eight-week period will reduce the vacation payment, but not, of course, below the floor of 40 hours.

(v) Time lost from work because of absences will not be deducted if the cause of such absence was spent on Union activities; an observed holiday; jury duty service; or attendance, pursuant to orders, at an armed services encampment or other armed service continuance training program, provided that no more than two weeks in a single calendar year shall be so credited as time worked.

(2) All payments will be based upon straight-time hourly earnings, i.e., no overtime premium will be added for hours in excess of 40.

(3) Since the requirement that an average of at least 42 hours must be worked before extended schedules are recognized is intended to screen out occasional and casual overtime, the amount of vacation payment will be computed for each individual Employee without regard to the amount or extent of overtime worked by other Employees in the division or unit in which he is employed.

d. An Employee who takes his vacation prior to the date upon which he becomes eligible, will receive payment upon qualifying on the basis of (a) his rate of pay at the time his vacation is taken and (b) his work schedule for the eight-week period ended one week prior to the commencement of vacation.

e. Employees who are on shift operation and working from 37½ to 40 hours per week will receive a vacation allowance based on a 40-hour week.

f. The amount of vacation allowance will be determined by multiplying the average hourly earnings (exclusive of overtime premium) by the regular weekly scheduled hours. The average earnings will be obtained from the last available regular monthly statistics except that, in the case of day workers only, when an Employee's job and rate has been changed prior to or coincident with the vacation period, the new rate of earnings will be used.

g. For determining vacation allowance payments, night shift differential for Employees whose regular schedules are on those shifts will be included in average hourly earnings.

h. Vacation pay allowances may be drawn in advance on the pay day preceding the Employee's vacation.

5. General Regulations

a. The annual plant shutdown for vacation purposes shall be considered as the vacation period which will run concurrently with the shutdown. The third week of vacation for Employees entitled to it will be scheduled immediately before or after the shutdown period. Employees whose term of one to five years of continuous service is completed after the shutdown period may be granted additional vacation pay allowances for which they are qualified after the shutdown period but before the end of the year. If they were absent during the shutdown, they may not be required to take additional time off. Other exceptions for certain departments or individuals by reason of the requirements of the business shall be at the Plant Manager's discretion.

b. The vacation season shall begin on January 1 and end on December 31 of each year. Vacations outside of shutdown will, at the Plant Manager's discretion, be scheduled to conform to the requirements of the business. No vacation shall be divided unless it is of two weeks' or more duration, in which case a division may be made only with the consent of the Plant Manager.

c. (1) An additional day or days of vacation for which an Employee is qualified will be scheduled at the discretion of the Plant Manager.

(2) Additional day or days for which an Employee may qualify later in the year may be taken at the time of the regular vacation and payment for such time will be made when the Employee has qualified.

d. (1) An Employee who is removed from the payroll for reasons other than lack of work, illness or injury and who is re-engaged within any calendar year without a break in service, must thereafter work in such a year a period of six months (or a period equal to his absence if less than six months) before receiving the vacation for which he would have otherwise been eligible for that year.

(2) If the Employee's absence was due to illness or injury, the following procedure will apply:—

(i) Such Employees who return to work prior to the vacation shutdown will be paid the vacation allowance for which

qualified at the time of the shutdown. Where no shutdown is scheduled or where such Employees return after the vacation shutdown, they shall work for one (1) month and then be eligible for their vacation allowance unless scheduled for vacation later in which case they shall be paid at the time of their vacation.

(ii) Any such Employee re-employed too late to work a period of one (1) month in the calendar year will be paid his vacation allowance and may have a portion of the time out considered as the vacation to which he is otherwise eligible.

(iii) Employees who fail to receive vacation pay for which qualified in any calendar year because of absence due to illness or injury and who return to work with continuity of service at any time in the following calendar year will be paid a pro rata vacation allowance for the prior year. Such pro rata payment shall be, for each month or major part thereof worked in the prior calendar year, one twelfth of the vacation allowance the Employee would have been paid in such prior year.

(3) Any such Employee who will qualify for a vacation late in the year may, if the Plant Manager approves, take his vacation at an earlier date, as if eligible, and then receive full payment when he qualifies.

e. It will not be permissible to postpone vacations from one year to another, or to omit vacations and draw vacation pay allowances in lieu thereof.

6. Pro Rata Payments

a. Employees who quit, resign, die, are discharged or laid off for lack of work prior to receiving their vacation pay for the calendar year will be paid one-twelfth of the vacation allowance for which they have qualified for each month or major part thereof from January 1 of the calendar year to the date removed from payroll; except that Employees who complete their first year of accumulated service credits after January 1 and who are laid off before taking a vacation, will receive the full vacation pay for which they are qualified as of the time of layoff. In the case of Employees who die, pro rata vacation payment will be treated as wages owing the Employee, and payment made accordingly.

b. (1) Those Employees who are laid off for lack of work, if re-employed by the Company during the same calendar year, will at the time of re-employment or at the time of the vacation shutdown (whichever is later) become eligible for a payment which, when added to the pro rata payment made at the time of layoff, will equal the total vacation allowance for which they are then qualified.

(2) Those Employees who are laid off for lack of work and not re-employed during the same calendar year, but who are re-employed within 12 months of the date of removal from payroll, will at the time of re-employment or at the time of the vacation shutdown (whichever is later) become eligible for payment of full vacation for which they are then qualified.

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## ARTICLE VII

## LAYOFFS — HIRING

1. When it becomes necessary to increase or decrease the operating force, the Company will give first consideration to the number of accumulative service credits of each Employee and secondly, ability, skill, experience and quality and quantity performance.

2. The Company shall give Employees at least one week's notice in writing before a layoff (other than a temporary layoff) except in cases when a layoff could not be foreseen.

## ARTICLE VIII

## REHIRING

1. No individual shall be hired until former Employees whose service has not been broken in accordance with Article III, paragraph 6, above, qualified to do the work available, have been considered for the work and given an opportunity by written notification to return to work, when there is time for giving a written notice. Otherwise, a verbal notice shall be given.

## ARTICLE IX

## WAGE RATES, OVERTIME, PREMIUM AND OTHER PAYMENTS

1. The Company shall furnish the Union, within 30 days after the signing of this Agreement, a complete list of job classifications and rate ranges.

2. The starting rate shall be not less than $1.037 plus "adders."

3. The minimum daywork rate shall not be less than $1.120 plus "adders." Such minimum daywork rate shall be paid an Employee who is on daywork, as soon as the Employee has proved to be satisfactory but not later than after 8 weeks of service credits have been accumulated.

3a. If an Employee has proven to be unsatisfactory within this period, the Employee shall be transferred or discharged as being unsatisfactory.

4. Should the bonus operators fail to earn an average of the guaranteed rate per hour per week then the earnings will be adjusted for the difference between the amount actually earned and the guaranteed rate for the job.

5. All Employees on recognized second and third shifts shall be paid an additional 10% bonus over the rate paid for such work done in the daytime.

6. Rate ranges for group leaders shall be at least 6 cents above the corresponding rate range for the highest job classification in the group which they are leading.

7. The guaranteed rate for the job shall be paid bonus operators, irrespective of hours involved for idle time, except as provided in paragraph 14 below; first aid, except as provided in paragraph 8 below; receiving instructions; scrap minutes charged to the same operator or operators responsible for the loss.

8. For time spent in the Company dispensary as the result of an industrial injury day workers shall be paid their daytime rate. Bonus workers shall be paid the 30% bonus, and learners shall be paid average earnings or 30% bonus whichever is less.

9. A bonus worker, who is temporarily transferred for the purpose of instructing other bonus workers shall be paid at the rate of his or her average straight-time hourly earnings for the preceding full week.

10. A bonus worker temporarily transferred for the convenience of the Company (such as assisting in the development of new methods or equipment) shall be paid at the rate of his or her average straight-time hourly earnings for the preceding full week.

11. An Employee temporarily transferred from a bonus job which continues, for the purpose of doing a special job at which the Employee is particularly skilled, shall be paid at the rate of his average straight-time earnings for the preceding full week.

12. When starting a new conveyor, if certain selected Employees, chosen because of special skills are transferred to the new group from jobs which are continuing, they will be paid their average straight-time earnings for the preceding full week until the group starts on a training program.

13. Work performed by conveyor groups during "pilot runs" shall be paid for at the average straight-time earnings for the preceding full week.

14. Conveyor down time caused through parts shortages, defective parts, machine breakdown or change overs, shall be paid at guaranteed rate. If the accumulated down time exceeds two hours per week, the excess will be paid for at the current week's average straight-time earnings.

15. All allowances for work other than that listed above will be paid at the operator's daywork rate applicable to the job performed.

16. Overtime allowances at time and one-half the Employee's average straight-time hourly rate for the current pay week shall be paid Employees for hours worked in excess of eight hours in any single working day or in excess of forty hours in any regular working week. Similar overtime allowances shall be paid to all Employees who work between 7:00 a.m. Saturday and 7:00 a.m. Sunday and on Washington's Birthday, Columbus Day, and Armistice Day, except to those Employees whose regular working schedule requires them to work on such days or during such hours.

17. Double time at the Employee's average straight-time hourly rate for the current pay week shall be paid to Employees for work performed between 7:00 a.m. Sunday and 7:00 a.m. Monday, and for hours worked in excess of 16 hours in any 24-hour period beginning with the start of the Employee's shift, and for work performed on New Year's Day, Patriot's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, except to those Employees whose regular working schedule requires them to work on such days or during such hours.

a. Employees whose regular working schedule falls upon New Year's Day, Patriot's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, shall be paid double time at their average straight-time hourly rate, provided said Employees have at the time of such work accumulated at least eight weeks' service credits and have worked a full schedule of hours on their regularly scheduled work day immediately preceding and immediately following such holidays, except for absences specified in

Article X, paragraph 2 c. If full schedules of hours have not been so worked, such Employees shall be paid at their average straight-time rate only for the actual hours worked on said holidays.

18. If the Company fails to notify an Employee not to report for work and as a result the Employee does report, he shall receive not less than four (4) consecutive hours of work and pay therefor, or not less than four (4) hours pay at the discretion of the Company, providing the Employee accepts such work as may be assigned to him. The four (4) hours pay referred to above shall be at daywork rate for dayworkers, shall be at 30% bonus for bonus workers, and in the case of learners shall be at their average earnings or 30% bonus whichever is less. The provisions of this Section, however, shall not apply in the event the cessation of the Company's operations has been caused by circumstances beyond its control.

19. An Employee who is called in outside of his regular working schedule shall be paid at his average straight-time hourly rate or at the appropriate overtime rate, as the case may be; provided, however, that in no event shall said Employee be paid less than the equivalent of four (4) hours' pay at his average straight-time hourly rate for the current pay week. Bonus workers shall be paid at least the 30% bonus, and learners shall be paid at their average earnings or 30% bonus whichever is less.

20. Day shift Employees who are told to report after midnight shall be paid double time up to the start of their regular shift, and second and third shift Employees who are called in prior to the start of their regular shift shall be paid at the rate of time and one-half up to the start of their regular shift.

21. There shall be no pyramiding of overtime on overtime, overtime on premium time or vice-versa.

## ARTICLE X

## HOLIDAYS AND PAY FOR HOLIDAYS NOT WORKED

1. The Company agrees to recognize the following holidays: New Year's Day, Washington's Birthday, Patriot's Day, Memorial Day, Fourth of July, Labor Day, Columbus Day, Armistice Day, Thanksgiving Day and Christmas. If a holiday falls on Sunday, it shall be recognized on the following Monday.

2. Employees, except those specified in paragraph 3 hereof, who have accumulated at least eight weeks' service credits shall be paid at their average straight-time rate for the following holidays not worked: New Year's Day, Patriot's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day provided—

a. Such holiday is observed during the individual Employee's regularly scheduled workweek; and

b. Provided such holiday is not observed during a plant or departmental shutdown other than for vacation purposes; and

c. Provided said Employees have worked the full schedule of hours on their regularly scheduled workday immediately preceding and immediately following such holiday; however, payment for the holiday will be made if the Employee worked during the week in which the holiday occurs, but is absent on the above

days due to Union activity, verified illness, emergency illness at home, death in family, jury duty, having been sent home during the week in which the holiday occurs for lack of work, having been out for lack of work for not more than two calendar weeks preceding the week in which the holiday occurs; and

d. Provided such Employees, when requested to work on such holidays due to emergencies, comply with such request, unless they have a legitimate reason for not working.

(1) In the event an Employee does work upon such a holiday pursuant to the Company's request, said Employee shall be paid double time at his average straight-time rate for the hours actually worked and straight time at such rate for the remaining unworked portion of the eight-hour holiday period.

3. Employees, regularly scheduled to work on any of the seven holidays specified in paragraph 2 above, who are notified by the Company not to work on such days, shall nevertheless be paid therefor, at their average straight-time rate, provided—

a. Said Employees have accumulated at least eight weeks' service credits; and

b. Said Employees have worked their full schedule of hours on their regularly scheduled workday immediately preceding and immediately following such holiday, except for absences specified in paragraph 2 c of this Article.

## ARTICLE XI

## DISCRIMINATION

1. It is the policy of both the Company and the Union not to discriminate against any Employee because of race, color, creed, marital status or national origin.

## ARTICLE XII

## GRIEVANCE PROCEDURE

1. The following shall be the procedure for the adjustment of grievances:

Step 1. After the occurance or knowledge of the situation, condition or action of Management giving rise to the grievance (a grievance concerning dismissal for cause other than layoff for lack of work must be filed in writing within one calendar week from the time that the Employee was discharged or the same shall be deemed to have been waived by the Employee and Union), Employees may take up grievances with their foremen either directly or through their steward.

If the grievance is taken up directly by the Employee with the foreman and the answer is not satisfactory, the Employee may take up the grievance with his steward, at which time the grievance shall be reduced to writing, signed by the Employee, and given to the foreman. If the first contact is through the steward, the procedure outlined in this paragraph shall be followed.

In general, the foreman will give a reply within 24 hours but if more time is required he will advise the Employee or steward, as the case may be, and an

answer shall be given within a calendar week of the presentation. The reply shall be in writing, if given to the foreman in writing.

Step 2. When agreement is not reached in Step 1, the grievance may be referred to the Business Agent, who together with the Employee involved and his steward may take it up with the Plant Personnel Supervisor and the foreman. The Company representatives will give a decision in writing within a calendar week, unless an extension of time is mutually agreed upon.

Step 3. When agreement is not reached in Step 2 the grievance may be referred to the Plant Manager and the Plant Personnel Supervisor by the Business Agent. The answer of the Company shall be given in writing within one calendar week, unless an extension of time is mutually agreed upon.

Step 4. When agreement is not reached in Step 3, the grievance may be referred to the Union Executive Board who may take it up with Management. Management's answer shall be given in writing within one calendar week of presentation, unless an extension of time is mutually agreed upon.

2. Any answer of Management not appealed by the Union from one step of the grievance procedure to the next step within two calendar weeks shall be considered as settled on the basis of the last answer given.

## ARTICLE XIII
## ARBITRATION

1. Any matter involving the application or interpretation of any provisions of this Agreement which shall not include a matter involving establishment of

wage rates, general increases or production standards may be submitted to arbitration by either the Union or the Company. The party desiring to arbitrate shall give the other written notice of its intention to arbitrate within thirty (30) days after the decision in Step 4 of Article XII is rendered unless this time limit has been extended in writing signed by both parties.

2. If the Company and the Union are unable to agree on the selection of an arbitrator within fifteen (15) days the Federal Mediation and Conciliation Service shall be asked to submit a list or lists of arbitrators from which one will be agreed upon.

3. The arbitrator shall hear and determine the dispute or controversy as promptly as possible and shall issue findings or award a decision in writing. The decision of the arbitrator shall be final, binding and conclusive upon the parties. Such decision shall be within the scope and terms of this Agreement and the authority of the arbitrator shall be limited to the interpretation, application, or determining compliance with the provisions of this Agreement but he shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement.

4. The cost of any arbitration shall be borne equally between the Company and the Union except each party shall pay the expenses of all witnesses called by it.

5. It is specifically agreed that no provision of this Agreement or other Agreements between the parties shall be subject to arbitration pertaining in any way to the establishment, administration, interpretation, or application of Insurance or Pension Plans in which the Employees are eligible to participate.

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## ARTICLE XIV

## STRIKES AND LOCK-OUTS

1. There shall be no strike, sit down, slow down, Employee demonstration or any other organized or concerted interference with work of any kind in connection with any matter subject to the grievance procedure and no such interference with work shall be directly or indirectly authorized or sanctioned by the Union or its officers or stewards. This provision shall not be applicable with respect to a strike called by the Union to be participated in by all Employees in the bargaining unit provided that:

a. Such strike is called with respect only to grievances which have been processed in accordance with all the respective and successive steps of the grievance procedure set forth in Article XII and arbitration has not been resorted to in accordance with Article XIII; and

b. Such strike is called and commences within sixty (60) days following the decision of the Company given to the Union pursuant to Article XII, Step 4.

2. Employees who violate the provisions of this Section are subject to disciplinary action.

3. The Company will not lock out any Employees.

## ARTICLE XV

## OFFICERS AND DELEGATES

1. Any Employee entering the employ of the Union or its parent bodies or named as a delegate or officer of the Union shall be granted a leave of absence by the Company without pay and without loss of accumulated service credits for a period of not more than one year.

## ARTICLE XVI

## NOTICE OF AGEEEMENT AND BULLETIN BOARDS

1. The Union will provide the Company with exact copies of this Agreement which the Company will make available to new Employees.

2. The Company will permit the Union use of Union bulletin boards to post regular Union notices authorized by officers of the Union and approved by the Company. However, such approval shall not be construed as agreement to the subject matter contained in such notice.

## ARTICLE XVII

## RETIREMENT

1. An Employee may retire at his or her option as provided in the Company Pension Plan, or be retired by the Company upon reaching the age for normal retirement and as provided in the Company Pension Plan whether or not such Employee is participating in the Plan.

## ARTICLE XVIII

## MODIFICATIONS

1. If either the Company or the Union desires to modify this Agreement it shall, not more than sixty (60) days and not less than thirty (30) days prior to June 10, 1954, and any anniversary date of said Agreement thereafter, present to the other written notice of the proposed modifications.

2. Not later than fifteen (15) days following receipt of such notice, collective bargaining negotiations shall commence between the parties for the purpose of considering the modifications so proposed in said written notice. Failing agreement upon such proposed modifications, the Union shall have the right to strike, but this Agreement shall continue in effect for an additional year unchanged as provided in Article XIX hereof.

3. In the event of such strike, the Company may, at its option, terminate this Agreement upon three (3) days' written notice to the Union.

## ARTICLE XIX

## TERMINATION

1. This Agreement shall be effective as of June 10, 1953, provided, however, that there shall be no retroactive payment made of any kind covering the period between the effective date of June 10, 1953, and the date of actual execution of this Agreement, and shall continue in full force thereafter until June 10, 1954, and thereafter from year to year unless not later than sixty (60) days prior to June 10, 1954, or any subse-

quent anniversary date either party shall notify the other in writing of its intention to terminate the Agreement upon such anniversary date.

Ashland, Massachusetts

Local 205, United Electrical, Radio and Machine Workers of America (UE)

Armando Mazzaro
Hans Hakansson
Grant T. Reeves
George Willis
George Blamire
Anthony J. Sarno
Fred J. Besozzi
Charles R. Carr
David A. Clements
W. F. Murdock

Telechron Department
General Electric
Company

B. J. Nolan
P. C. Baker
R. B. Hally
D. E. Whitelam
A. F. Fisher

[fol. 9] EXHIBIT B TO COMPLAINT

[The contract of June 29, 1953 (Exhibit A) was modified on July 14, 1953 and extended until September 1955. The pertinent provisions of the contract of June 1953 remain unchanged. The provisions in the modified and extended contract concerning its extension and termination are as follows:]

*Agreement*

This Agreement made the twenty-ninth of June, 1953, and modified July 14, 1954, between Telechron Department of the General Electric Company (referred to as Company) and Local 205 U.E.R.M.W.A. (referred to as Union).

* * * * * * *

*Article XX*

*Termination*

1. This Agreement shall be effective as of July 7, 1954 and shall continue in full force thereafter until September 17, 1955 and thereafter from year to year unless not later than sixty (60) days prior to September 17, 1955 or any subsequent anniversary date, either party shall notify the other in writing of its intention to terminate the Agreement upon such anniversary date.

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[fol. 10] IN UNITED STATES DISTRICT COURT

MOTIONS TO STRIKE, TO DISMISS OR FOR MORE DEFINITE STATEMENT—Filed January 17, 1955

The defendant moves the Court as follows:

MOTION TO STRIKE MATTER RELATING TO DAMAGE

1. To strike paragraph 5 under Count II of the complaint and that part of the prayer for relief which demands damages on the ground that such matter is redundant, im-

material and impertinent in that it relates only to the question of special damages but the items thereof are not specifically stated.

Motion to Strike Request for Specific Performance

2. To strike that part of the prayer for relief which demands that defendant be compelled to arbitrate the so-called Boiardi and Armstrong grievances in that neither Count I nor Count II of the complaint states a claim against defendant upon which this Court has jurisdiction to grant the remedy of specific performance;

Motion to Dismiss

3. To dismiss the action on the ground that neither Count I nor Count II of the complaint states a claim against defendant upon which any relief can be granted.

Motion for More Definite Statement

4. If the motion to dismiss set forth in paragraph 3 above is denied, to order the plaintiff to furnish a more definite statement of the following maters:

Count I

4.1 The specific issue or issues (including the plaintiff's allegations of relevant facts) which are involved in the so-called Boiardi grievance and which according to the plaintiff are subject to arbitration under the agreement attached to the complaint and marked [fol. 11] Exhibit B and which the defendant should be compelled to arbitrate.

4.2 The specific provisions of said agreement, the application or interpretation of which according to the plaintiff are involved in the resolution of the aforesaid issue or issues relating to the Boiardi grievance so as to present an arbitrable issue under Article XIII, Sections 1 and 3, of said agreement.

Count II

4.3 The specific issue or issues (including the plaintiff's allegations of relevant facts) which are involved

in the so-called Armstrong grievance and which according to the plaintiff are subject to arbitration under the agreement attached to the complaint and marked Exhibit B and which defendant should be compelled to arbitrate.

4.4 The specific provisions of said agreement, the application or interpretation of which according to the plaintiff are involved in the resolution of the aforesaid issue or issues relating to the Armstrong grievance so as to present an arbitrable issue under Article XIII, Sections 1 and 3, of said agreement.

4.5 If the defendant's motion to strike paragraph 5 under Count II is denied, the particular items of special damage (including the amount or amounts thereof) claimed in said paragraph 5 with respect to both Count I and Count II of the complaint.

The ground of this motion is that plaintiff's complaint is so vague and ambiguous that defendant cannot reasonably be required to frame a responsive pleading on either Count I or Count II, in that (i) the complaint alleges the filing of certain grievances but fails to set forth the specific issues involved in said grievances which are arbitrable under the agreement and fails to set forth and identify any [fol. 12] specific provisions of the agreement, the application or interpretation of which are involved in the resolution of such issues, and (ii) paragraph 5 under Count II of the complaint apparently alleges items of special damage but the same are not stated with sufficient particularity.

(S.) Francis J. Vaas, Attorney for Defendant.
Ropes, Gray, Best, Coolidge & Rugg, 50 Federal Street, Boston 10, Massachusetts.

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IN UNITED STATES DISTRICT COURT

MEMORANDUM—February 24, 1955

ALDRICH, D. J.:

In spite of certain semi-concessions, including my own, made at the argument it seems to me on further examination of the complaint that before I am called upon to depart

from a previous decision of this court there should be allegations definitely showing that the point is raised. The plaintiff alleges that it filed grievances, but it does not, in my opinion, allege substantive facts affirmatively showing that it in fact had bona fide grievances, cf. *North Station Wine Co.* v. *United Liquors, Ltd.*, 323 Mass. 48, 51, or that they were grievances which, whether the plaintiff was right or not, reasonably appeared within the arbitration clause.

The plaintiff may have until March 4 to file an amendment or a new complaint.

(S.) Aldrich, U. S. D. J.

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[fol. 13] IN UNITED STATES DISTRICT COURT

AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO ARBITRATE AND FOR DAMAGES—Filed March 11, 1955

Count I

1. Plaintiff is a voluntary unincorporated labor association which has been certified by the National Labor Relations Board, and is recognized by the Company, as the exclusive representative for the purpose of collective bargaining of the hourly rated production and maintenance employees of defendant Company, employed in its Telechron Department plant at Ashland, Massachusetts in an industry affecting commerce. Plaintiff maintains its principal office in Ashland, Massachusetts, where its duly authorized officers and agents are engaged in representing and acting for employee members.

2. Defendant is a corporation organized under and by virtue of the laws of the State of New York and doing business at its Telechron Department plant in Ashland, Massachusetts. It is the employer of the employees who are members of plaintiff Union, and is engaged in, and its activities affect, interstate commerce.

3. This action arises under the provisions of Section 301(a), 301(b) and 301(c) of the Labor Management Relations Act of 1947 (29 U.S.C.A. Sections 151, 185(a), 185(b) and 185(c)).

4. On June 29, 1953, planitiff and defendant entered into a collective bargaining contract, effective as of June 10, 1953, which continued in effect until June 14, 1954, when it was modified, and, as modified, is in effect until September 27, 1955. Copies of these contracts are attached to the Complaint herein, filed December 16, 1954, and made a part thereof as Exhibits A and B and are referred to hereinafter as the contract. The contract provides in Article XIII thereof:

[fol. 14] "*Arbitration*

1. Any matter involving the application or interpretation of any provisions of this Agreement which shall not include a matter involving establishment of wage rates, general increases or production standards may be submitted to arbitration by either the Union or the Company. The party desiring to arbitrate shall give the other written notice of its intention to arbitrate within thirty (30) days after the decision in Step 4 of Article XII is rendered unless this time limit has been extended in writing signed by both parties.

2. If the Company and the Union are unable to agree on the selection of an arbitrator within fifteen (15) days the Federal Mediation and Conciliation Service shall be asked to submit a list or lists of arbitrators from which one will be agreed upon.

3. The arbitrator shall hear and determine the dispute or controversy as promptly as possible and shall issue findings or award a decision in writing. The decision of the arbitrator shall be final, binding and conclusive upon the parties. Such decision shall be within the scope and terms of this Agreement and the authority of the arbitrator shall be limited to the interpretation, application, or determining compliance with the provisions of this Agreement but he shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement.

4. The cost of any arbitration shall be borne equally between the Company and the Union except each party shall pay the expenses of all witnesses called by it.

5. It is specifically agreed that no provision of this Agreement or other Agreements between the parties

shall be subject to arbitration pertaining in any way to the establishment, administration, interpretation, or [fol. 15] application of Insurance or Pension Plans in which the Employees are eligible to participate."

5. The contract further provides in Article IX thereof:

"1. The Company shall furnish the Union, within thirty (30) days after the signing of this Agreement a complete list of job classifications and rate ranges."

6. Pursuant to the foregoing provision of Article IX of the contract, defendant furnished plaintiff a complete list of job classifications and rate ranges within thirty (30) days after the signing of the contract in June, 1953. This list included the job classification "Repairman I Class, 3501" for which the rate range was stated as beginning with $1.546 an hour, as the lowest rate in such classification.

7. From and after June 10, 1952, Joseph Boiardi, a member of plaintiff Union, was employed by defendant, with a job classification of Repairman I Class, 3501, but was at all times paid at the rate of $1.489 an hour. No such rate appears in the rate ranges applicable to Repairman I Class, 3501, in the list furnished to plaintiff by defendant, pursuant to Article IX of the contract.

8. On April 2, 1954, plaintiff filed a written grievance with defendant that the said Joseph Boiardi was being paid and for a considerable period of time thereto had been paid at a lower rate of pay than specified in his job classification furnished under Article IX, paragraph 1, of the contract, that defendant had not properly applied the contract in its payments to Boiardi, and that Boiardi should be paid the rate which his classification calls for. Thereafter, plaintiff duly processed the said grievance in accordance with the grievance-procedure of the said contract without reaching agreement with defendant.

9. On June 10, 1954, plaintiff duly notified defendant in writing that, in accordance with Article XIII of the contract, it requested submission to arbitration of the Joseph Boiardi grievance; that it considered the Company's action [fol. 16] to be in violation of the contract; and that it nominated a certain arbitrator.

10. On June 16, defendant notified plaintiff that it was

unwilling to arbitrate this matter. Thereafter, despite other requests by plaintiffs to submit the matter to arbitration, defendant continued to refuse and still refuses to submit either the arbitrability of the grievance or the grievance itself to arbitration, in violation of the said contract, and to carry out its agreement to arbitrate as set forth in Article XIII of said contract.

Count II

1. Paragraphs 1 through 4 of the First Count are realleged and made a part hereof.

2. Article XII of the contract provides:

"Grievance Procedure

1. The following shall be the procedure for the adjustment of grievances:

Step 1. After the occurance (sic) or knowledge of the situation, condition or action of Management giving rise to the grievance, *(a grievance concerning dismissal for cause* other than layoff for lack of work must be filed in writing within one calendar week from the time that the Employee was discharged or the same shall be deemed to have been waived by the Employee and Union), Employees may take up grievances with their foremen either directly or through their steward. . . ." (Italics supplied)

3. On and before August 13, 1954, Charles Armstrong, a member of the plaintiff union was employed by defendant as an hourly-paid tool crib attendant. On or about August 13, 1954, he was asked by his foreman to clean certain machines, in addition to his duties as a tool crib attendant. [fol. 17] Upon his refusal to undertake the additional work as requested, he was discharged, allegedly for cause.

4. On August 13, 1954, plaintiff filed a written grievance with defendant that employee Armstrong had been discharged arbitrarily, and not for cause, due to a misunderstanding as to the duties of his job, on the basis of defendant's job description of Armstrong's duties as a tool crib attendant, which failed to describe the duties of a tool crib attendant thoroughly, and the foreman's failure to instruct

Armstrong at any time as to the duties of a tool crib attendant. The grievance alleged that the penalty of discharge was too severe. Plaintiff duly processed the said grievance through the grievances procedure under the said contract without reaching agreement with defendant.

5. On September 24, 1954, plaintiff duly notified the defendant that it was submitting to arbitration the Charles Armstrong grievance as a matter of application of the contract and would shortly submit the name of a proposed arbitrator and form of the question.

6. On September 30, 1954, defendant notified plaintiff that it refused to submit the said grievance to arbitration; and thereafter, despite renewed requests by plaintiff, defendant continued to refuse, and still refuses, in violation of said contract, to submit either the arbitrability of the grievance or the grievance itself to arbitration and to carry out its agreement to arbitrate as set forth in Article XIII of the said contract.

7. By reason of defendant's aforesaid refusal to arbitrate the said Boiardi and Armstrong grievances, and its aforesaid violations of the collective bargaining contract, plaintiff has been damaged in its collective bargaining relationship and its ability to act as collective bargaining representative for employees, it has lost prestige, good will, and organizational strength; and it has incurred expenses for payment of lost time and other expenses to union repre-
[fol. 18] sentatives in negotiations with the defendant seeking to have the defendant agree to arbitrate the said grievances, in the sum of Five Hundred ($500.00) Dollars, and the additional expenses of this law suit, including attorney's fees, to remedy the defendant's breach of its contract to arbitrate the said grievances, in the sum, to date, of Five Hundred ($500.00) Dollars or such other sum as may be awarded by this Court.

Wherefore, plaintiff demands that defendant be required specifically to perform its agreement to arbitrate by submitting to arbitration the grievances involving Joseph Boiardi and Charles Armstrong, in accordance with Article XIII of the said contract, (2) damages in the sum of three thousand dollars ($3,000), (3) if specific performance is not granted, plaintiff have judgment against defendant in

the sum of ten thousand dollars ($10,000), (4) that defendant be required to pay the costs, disbursements, and expenses, including reasonable attorney's fees, in this action, (5) that plaintiff may have such other and further relief as the Court may deem just and proper.

By its attorney (s) Allan R. Rosenberg, 10 Tremont Street, Boston 8, Massachusetts.

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In United States District Court

Motion to Strike Request for Specific Performance—Filed March 28, 1955

The defendant moves the Court to strike that part of the prayer for relief which demands that defendant be compelled to arbitrate the so-called Boiardi and Armstrong grievances in that neither Count I nor Count II of the amended complaint states a claim against defendant upon [fol. 19] which this Court has jurisdiction to grant the remedy of specific performance.

(s) Francis J. Vaas, by LMcG (s) Lane McGovern, Attorneys for Defendant. Ropes, Gray, Best, Coolidge & Rugg.

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In United States District Court

Answer—Filed March 28, 1955

First Defense to Count I

1. The defendant admits the averments of paragraph 1.

2. The defendant admits the averments of paragraph 2.

3. The defendant admits that the plaintiff purports to bring this action under the provisions of Section 301(a), 301(b) and 301(c) of the Labor Management Relations Act of 1947. The defendant denies every other averment of paragraph 3.

4. The defendant admits that, on June 29, 1953, plaintiff and defendant entered into a collective bargaining contract, effective as of June 10, 1953, but denies that said contract

was modified on June 14, 1954 or that said contract, as modified, is in effect until September 27, 1955. Further answering the averments of the first sentence of paragraph 4, the defendant says that said contract continued in effect until July 14, 1954, when it was modified, and, as modified, is in effect until September 17, 1955 and thereafter from year to year unless not later than sixty (60) days prior to September 17, 1955 or any subsequent anniversary date, either party shall notify the other in writing of its intention to terminate said contract upon such anniversary date. The defendant admits the averments contained in the last two sentences of paragraph 4.

5. The defendant admits the averments of paragraph 5.

[fol. 20] 6. The defendant admits that, pursuant to Article IX of the contract, and within thirty (30) days after the signing of the contract in June, 1953, it furnished plaintiff a complete list, within the understanding of the parties, of job classifications and rate ranges. The defendant admits the averments of the second sentence of paragraph 6.

7. The defendant admits that Joseph Boiardi was employed by defendant from and after June 10, 1952 but denies that his job classification, at any time, was Repairman I Class, 3501. Further answering, the defendant says that there is no reasonable basis for the plaintiff's allegation that, from and after June 10, 1952, Joseph Boiardi's job classification was that of Repairman I Class, 3501. The defendant denies that Boiardi was at all times paid at the rate of $1.489 an hour from and after June 10, 1952, but says that Boiardi was paid at said rate from and after June 16, 1952. The defendant admits the averments of the last sentence of paragraph 7.

8. The defendant admits that, on April 2, 1954, a written grievance was filed by plaintiff containing, in substance, the allegations as averred in the first sentence of paragraph 8. The defendant admits the averments of the second sentence of paragraph 8.

9. The defendant admits the averments of paragraph 9.

10. The defendant admits the averments of the first sentence of paragraph 10. As to the second sentence of paragraph 10, the defendant admits that plaintiff has made other requests to submit the matter to arbitration, and that defendant continued to refuse and still refuses to submit

either the arbitrability of the grievance or the grievance to arbitration, but denies that such refusal by defendant is in violation of said contract and denies that such refusal constitutes a refusal to carry out defendant's agreement to arbitrate as set forth in Article XIII of said contract.

[fol. 21] Second Defense to Count I

The defendant says that Count I fails to state a claim against defendant upon which relief, in the form of the remedy of specific performance, may be granted.

First Defense to Count II

1. For answer to paragraph 1 the defendant incorporates by reference the foregoing paragraphs number 1 through 4, inclusive, under defendant's first defense to Count I.

2. The defendant admits the averments of paragraph 2.

3. The defendant admits that on and before August 13, 1954, Charles Armstrong was a member of the plaintiff union and was employed by defendant as an hourly-paid tool crib attendant. The defendant admits that on or about August 13, 1954, Armstrong was asked by his foreman to clean certain machines, and that, upon his repeated refusal to do the work as requested, he was discharged. The defendant denies that said work was in addition to his duties as a tool crib attendant.

4. The defendant admits that, on August 13, 1954, a written grievance was filed by the plaintiff containing, in substance, the allegations as averred in the first two sentences of paragraph 4. The defendant admits the averments of the third sentence of paragraph 4.

5. The defendant admits the averments of paragraph 5.

6. The defendant admits that on September 30, 1954 defendant notified plaintiff that it refused to submit said grievance to arbitration. The defendant also admits that, thereafter, defendant continued to refuse, and still refuses, to submit either the arbitrability of said grievance or said grievance to arbitration, but denies that such refusal is in violation of said contract and denies that such refusal constitutes a refusal by defendant to carry out its agreement to arbitrate as set forth in Article XIII of said contract.

[fol. 22] 7. The defendant denies every averment set forth in paragraph 7.

Second Defense to Count II

The defendant says that Count II fails to state a claim against defendant upon which relief, in the form of the remedy of specific performance, may be granted.

(s) Francis J. Vaas, by LMcG (s) Lane McGovern, Attorneys for Defendant, Ropes, Gray, Best, Coolidge & Rugg.

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In United States District Court

Opinion—March 28, 1955

Aldrich, D.J.

This is a motion to strike claims for equitable relief in a suit brought under § 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185. The relief requested is specific enforcement of the arbitration provisions of a collective bargaining contract. Thus I am asked to review the decision of Judge Wyzanski in *Textile Workers Union* v. *American Thread Co.*, D. Mass. 113 F. Supp. 137. This is a duty not lightly to be undertaken, but the arguments presented seem sufficiently persuasive to warrant such consideration. Certain implications of American Thread have not found uniform acceptance. Of greater importance, so far as I am concerned, the Court of Appeals has since had occasion to pass on one aspect of equitable jurisdiction under § 301(a ), *W. L. Mead, Inc.* v. *International Brotherhood, etc.*, 1 Cir., 217 F. 2d 6, affirming my disclaimer of jurisdiction to enjoin a strike in violation of a collective bargaining contract, 125 F. Supp. 331.

In the Mead opinion I cited American Thread as author-[fol. 23] ity for the belief that § 301(a) gives the court some equity powers if the Norris-LaGuardia Act does not interfere. As I read the decision of the Court of Appeals, the now material difference between that court and myself was that it was more cautious than I was with respect to that dictum. And while it did not criticize American Thread, neither could it be said that it gave it even oblique approval.

The substance of the decision of the Court of Appeals in Mead is summarized, at p. 9, in the following two sentences,

> "Nowhere in the section [§ 301] is it expressly provided that the terms of the Norris-LaGuardia Act shall not be applicable to suits for violation of collective bargaining agreements; and § 301 contains no provisions necessarily inconsistent with the terms of the earlier Act. . . . It is an accepted canon of construction that repeals by implication are not favored."

The omitted portion of the opinion between those two sentences, and the Mead decision itself, indicates to me that the court felt American Thread could be considered sound only if the injunctive power there recognized was not contrary to the provisions of the Norris-LaGuardia Act, without the benefit of any implied repeal by the Labor Management Act.

The questions, therefore, are, does Norris-LaGuardia forbid injunctions to enforce arbitration agreements, and, if it does not, in the light of Norris-LaGuardia, does § 301 (a) by implication confer jurisdiction for such enforcement?

There can be no doubt that the refusal to arbitrate the interpretation and application of a wage rate, and of a discharge, although an alleged breach of a collective bargaining agreement, constitutes a labor dispute. *W. L. Mead v. International Brotherhood,* supra. With certain specific exceptions Norris-LaGuardia in terms forbids injunctions [fol. 24] in all labor disputes. Arbitration is not one of the stated exceptions. At the same time, however, it must be recognized that when Norris-LaGuardia was enacted compulsory arbitration was an unavailable remedy,[1] and logically could scarcely be expected to be included in the list

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[1] Cf. *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, assuming the Federal Arbitration Act did not apply, which no one then thought. *International Union v. Colonial Hardwood Floor Co.*, 4 Cir., 168 F.2d 33; *Mercury Oil Refining Co v. Oil Workers Int. Union, CIO*, 10 Cr., 187 F.2d 980; but cf. *Hoover Motor Exp. Co. v. Teamsters, Chauffeurs, etc.*, 6 Cir., 217 F.2d 49.

of exceptions. It is also to be noted that the act did give affirmative approval of voluntary arbitration. 29 U.S.C. § 108.

American Thread cites several cases on the subject of Norris-LaGuardia. The first is *Milk & Ice Cream Drivers & Dairy Employees* v. *Gillespie Milk Products Corp.*, 6 Cir., 203 F.2d 650. This per curiam opinion is not persuasive. In the first place it seems to suggest that § 301 gives full injunctive powers. This is contrary to Mead. Beyond that, it relies on Aleo Mfg. Co., the second decision cited in American Thread, and discussed infra. American Thread's third citation is *Mountain States Division No. 17* v. *Mountain States T. & T. Co.*, D.C.D.Colo., 31 F.Supp. 397, which holds that an action to enforce a collective bargaining agreement does not involve a "labor dispute." In the light of Mead, this is no authority.

The decision in *Textile Workers Union* v. *Aleo Mfg. Co.*, D.C.M.D.N.C., 94 F.Supp. 626, principally relied on by American Thread and Gillespie, is an interesting one. There a union sought a mandatory injunction to compel an employer to recognize an award and reinstate two striking employees. In taking jurisdiction the court made two observations. One was that the requirements of Norris-LaGuardia have been met. The other was that § 104 related only to injunctions against unions, and not to those sought in their favor.

[fol. 25] It is difficult to perceive on the face of the opinion how the requirements of the act had been met. Indeed, in this regard the decision is reminiscent of the type of judicial erosion suffered by the Clayton Act, against which loose interpretation § 101 of Norris-LaGuardia seems expressly designed. The court's second observation is also questionable. Regardless of what may be said about the general purpose clause, § 102, even though Norris-LaGuardia in fact proved to be, and doubtless, was expected to be, of far greater use to unions than to employers, I do not believe it was intended to be a one-way street. On the contrary, in the report of the Senate Judiciary Committee Senator Norris stated quite the opposite.[2]

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[2] "It will be observed that this section [106], as do most all of the other prohibitive sections of the bill, applies both

I am forced to conclude that the plain language of Norris-LaGuardia forbids the issuance of an injunction. Under the circumstances reliance on generalizations in the forms of declarations of policy which might lead me to think that Congress would have intended an exception for a situation which it does not appear that it anticipated, had it been visualized, seems to go beyond my powers. Furthermore, Congress had full opportunity to provide that exception itself when it passed the Labor Management Act; if by that act it had a purpose to create injunctive remedies. Having in mind that implied revocations are not favored, I discover nothing in the act, or in its legislative history,[3] to warrant [fol. 26] a finding that it did so. It becomes necessary to review the other aspects of American Thread. The motion to strike the prayer for an injunction is granted for want of jurisdiction. I do not pass on the defendant's remaining motions, since the plaintiff amended its complaint after they were heard. If it wants them considered, they should be remarked.

(S.) Aldrich, United States District Judge.

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to organizations of labor and organizations of capital. The same rule throughout the bill, wherever it is applicable, applies both to employers and employees, and also to organizations of employers and employees." Sen. Rep. No. 163, 72d Cong., 1st sess., 19.

[3] An earlier draft of the Labor Management Act expressly provided that Norris-LaGuardia should be repealed in the case of actions to enforce collective bargaining agreements. § 302(e). H.R. 3020. House Rep. No. 245, 80th Cong. 1st sess. 95. This section was rejected, except for express reservations, as Senator Taft thereafter informed the Senate. Congress, Rec. June 5, 1947, 6603. See, also, *Castle and Cooke Terminals* v. *Local 137, etc.*, D. Hawaii, 110 F.Supp. 247, 251.

IN UNITED STATES DISTRICT COURT

MEMORANDUM—April 27, 1955

ALDRICH, D. J.

This action, brought in two counts, alleged that the defendant had refused to arbitrate a wage and a discharge matter with the plaintiff union as the representative under its collective bargaining contract of two of its employees. One count related to one employee, and one to the other. In each count the plaintiff asked for a mandatory injunction to compel arbitration, and for damages. The plaintiff did not ask for any restraining order or preliminary injunction, and before any injunction was asked for, apart from the general prayer for final injunction contained in the complaint, the defendant moved that this prayer for a final injunction be stricken.

In an opinion dated March 28, 1955 I stated I would grant the defendant's motion. The plaintiff is apprehensive that this is not the same thing as "refusing" an injunction, so as to permit an immediate appeal under § 1292. There would seem to be some basis for that apprehension. Cf. *American Machine & Metals, Inc.*, v. *De Bothezat Impeller Co., Inc.*, 2 Cir., 173 F.2d 890; cert. den. 339 U.S. 979. *Bendix Aviation Corp.* v. *Glass*, 3 Cr., 195 F.2d 267, 272. The plaintiff states that it will file such an appeal, but also, in order to have another string to its bow, it now moves [fol. 27] under Rule 54(b) that the court "enter final judgment on the . . . allowance . . . of defendant's motion to strike request for specific performance."

Since March 28 Judge Sweeney has allowed a similar motion, and I am informed that Judge Clifford in Maine has denied a similar motion. The matter is of importance, and I have no hesitancy in determining, and do, that there is no just reason for a delay. I have more difficulty in determining that each count of the complaint, standing alone, contains more than one "claim for relief." If this means more than one cause of action, the requirements of Rule 54(b) are not met. If it means claims for more than one form of relief, viz., equitable and legal, they are met.

I further understand that although my opinion with relation to the defendant's motion was handed down March 28th, no actual order was entered thereon. I will therefore enter the order forthwith and I direct, so far as it be in my power to do so, that it be considered as a final judgment so far as the claims for equitable relief are concerned. I have no intention of revising my decision on those claims prior to any appeal.

Since the plaintiff is appealing, anyway, under § 1292, it is my purpose to add, so far as I can, to the jurisdiction of the Court of Appeals, although I have considerable doubts whether that purpose can be effected.

(s) B.A.
*U. S. D. J.*

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IN UNITED STATES DISTRICT COURT

ORDER—April 27, 1955

ALDRICH, J. After hearing, and in accordance with the Opinion of the Court dated March 28, 1955, it is

Ordered that defendant's Motion to Strike the Plaintiff's Prayer for an Injunction is granted for want of jurisdic-
[fol. 28] tion, and a final judgment is entered dismissing claims for equitable relief.

By the Court (S.) John F. Davis, Deputy Clerk.

(s) BA, United States District Judge. 4/27/55.

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IN UNITED STATES DISTRICT COURT

MOTION TO AMEND AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO ARBITRATE AND FOR DAMAGES—Filed April 27, 1955

Plaintiff moves to amend the Amended Complaint herein, filed March 11, 1955, by striking therefrom Paragraph 7

of Count II and the following and substituting therefor the following:

7. The matter in controversy exceeds the sum of Three Thousand Dollars ($3,000.00), exclusive of interest and costs.

8. The plaintiff has no adequate remedy at law.

9. The plaintiff will be subject to substantial and irreparable injury unless granted the relief requested.

10. Wherefore, plaintiff demands that defendant be required specifically to perform its agreement to arbitrate by submitting to arbitration the grievances involving Joseph Boiardi and Charles Armstrong, in accordance with Article XIII of the said contract, and that plaintiff may have such other and further relief as the Court may deem just and proper.

By its attorney, (S.) Allan R. Rosenberg.

Assented to:

Ropes, Gray, Best, Coolidge & Rugg, by (S.) Francis Vaas, Attorney for the defendant.

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[fol. 29] IN UNITED STATES DISTRICT COURT

ORDER OF DISMISSAL—April 27, 1955

ALDRICH, D. J.:

Plaintiff's motion to amend the amended complaint filed following my order of even date with relation to defendant's motion to strike is hereby allowed, and the action now being solely for equitable relief, for the reasons stated in the opinion of March 28th, the action is hereby dismissed for want of jurisdiction.

By the court, (S.) Penelope Odessey.

(S.) B. A., U. S. D. J.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed April 27, 1955

Notice is hereby given that Local 205, United Electrical, Radio and Machine Workers of America (UE), plaintiff above-named, hereby appeals to the United States Court of Appeals for the First Circuit from the Order entered in this action on April 27, 1955 granting defendant's Motion to Strike Plaintiff's Prayer for Injunction for want of jurisdiction and entering final judgment dismissing claims for equitable relief, and from the Order of Dismissal, entered by the Court on April 27, 1955.

(S.) Allan R. Rosenberg, Attorney for Appellant, Local 205, United Electrical, Radio and Machine Workers of America (UE), 10 Tremont Street, Boston 8, Massachusetts.

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[fol. 30] Argument and submission—October 6, 1955 (omitted in printing).

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[fol. 30a] IN UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MOTION TO AMEND COMPLAINT TO SHOW JURISDICTION—Filed January 31, 1956

Plaintiff Appellant moves to amend the Amended Complaint for Specific Performance of Contract to Arbitrate and for Damages herein by adding as the last sentence of paragraph one of Count I thereof: (R. 13)

> "All of the employee members of, or employees represented by plaintiff Union are citizens of Massachusetts, Rhode Island or New Hampshire, none are citizens of New York",

and as the last sentence of paragraph three of Count I thereof: (R. 13)

> "This Court also has jurisdiction by virtue of Title 28, U. S. C. 1332(a)(1)."

By its attorney, (S.) Allan R. Rosenberg.

AFFIDAVIT IN SUPPORT OF APPELLANT'S MOTION TO AMEND COMPLAINT TO SHOW JURISDICTION

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss:

Charles R. Carr, being duly sworn, deposes and says:

My name is Charles R. Carr. I live at 16 Curve Street, Millis, Massachusetts. I am employed at the plant of appellee, General Electric Company, Telechron Department, at Ashland, Massachusetts, and have been so employed for the past seventeen years, except for four years' service in [fol. 30b] the armed forces. I am and have been for the past two years Business Agent of Local 205, United Electrical, Radio and Machine Workers of America (UE), appellant herein. I make this affidavit in support of appellant's motion to amend complaint to show jurisdiction.

Based on my own personal knowledge and an examination of the records of appellant Union, I depose and say that all the employees who are members of or represented by appellant Union are and were at the time of commencement of suit herein, citizens of the Commonwealth of Massachusetts, the State of Rhode Island, or the State of New Hampshire, and none of them were at the time of commencement of suit herein or are now, citizens of the State of New York.

(S.) Charles R. Carr.

COMMONWEALTH OF MASSACHUSETTS, SUFFOLK, ss:

Subscribed and sworn to before me, this thirty-first day of January, 1956.

(S.) C. Bertram Crawford, Notary Public.

My commission expires April 2, 1959.

In United States Court of Appeals for the First Circuit

Order of Court—April 25, 1956

It is ordered that motion of appellant to amend complaint to show jurisdiction be, and the same hereby is, denied.

By the Court: (S.) Roger A. Stinchfield, Clerk.

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[fol. 30c] Clerk's Certificate to foregoing papers omitted in printing.

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[fol. 31] In United States Court of Appeals for the First Circuit

No. 4980

Local 205, United Electrical, Radio and Machine Workers of America (UE), Plaintiff, Appellant,

*v.*

General Electric Company, (Telechron Department, Ashland, Massachusett., Defendant, Appellee

Appeal from the United States District Court for the District of Massachusetts

[129 F. Supp. 665.]

Before Magruder, *Chief Judge*, and Woodbury and Hartigan, *Circuit Judges*

*Allan R. Rosenberg* for appellant.

*Warren F. Farr*, with whom *William J. Barron, Francis J. Vaas, Lane McGovern* and *Ropes, Gray, Best, Coolidge & Rugg* were on brief for appellee.

Opinion of the Court—April 25, 1956

Magruder, *Chief Judge*. This case, together with two others also decided today, presents the question of whether a federal district court has authority, under § 301 of the Labor Management Relations Act of 1947 (61 Stat. 156),

to compel an employer to arbitrate a dispute in accordance with the terms of a collective bargaining agreement between such "employer and a labor organization representing employees in an industry affecting commerce."

[fol. 32] Plaintiff-appellant is an unincorporated labor organization representing employees of defendant Company at a plant in Ashland, Mass., which is, without dispute, in an industry affecting commerce, within the meaning of the Act. Article XII of the collective bargaining agreement in effect between the parties at the relevant dates established a conventional four-step procedure for adjustment of employee grievances between the Union and the Company, by which negotiation was to continue at progressively higher levels if an agreement was not reached. Article XIII provided:

> "1. Any matter involving the application or interpretation of any provisions of this Agreement which shall not include a matter involving establishing of wage rates, general increases or production standards may be submitted to arbitration by either the Union or the Company. . . ."

The article required written notice of intention to submit an unresolved grievance to arbitration within 30 days after the decision rendered in step 4 of the grievance procedure, and it went on to describe certain procedural matters and restrictions on the scope of the arbitrator's authority. He was limited, in so far as relevant here, to "interpretation, application, or determining compliance with the provisions of this Agreement but he shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement."

Two grievances filed by the Union in 1954 are the subject of its present suit. One involved a dispute over whether an employee named Boiardi was employed in a certain job classification carrying a higher rate of pay than he in fact was receiving; the other involved the propriety of the discharge of an employee named Armstrong for refusing to clean certain machines when he asserted that such work [fol. 33] was in addition to his regular duties. After unsuccessfully prosecuting these matters through the procedure of Art. XII, the Union duly notified the Company in each

case of its desire to arbitrate, but the Company refused to submit to arbitration either the merits of the two grievances or the disputed issue of whether they were arbitrable under the provisions of Art. XIII first quoted above. The Union then filed its complaint in the district court, alleging jurisdiction under § 301. It sought as to each of the grievance cases an order "that defendant be required specifically to perform its agreement to arbitrate" and damages. After the district court granted a motion to strike the claims for equitable relief, the amended complaint was again amended to eliminate the damage claims. This was done so that no question could be raised as to the appealability of the decision. Plaintiff's appeal is properly here, under 28 U.S.C. § 1291, from the final order of April 27, 1955, which dismissed the complaint for want of jurisdiction, the district judge being of the view that he was forbidden by the Norris-LaGuardia Act (47 Stat. 70) from issuing the requested order to compel arbitration of the two disputes. See 129 F. Supp. 665.

I

In any case where equitable relief in some form is sought in the context of a controversy involving labor relations, a federal court must inquire whether the Norris-LaGuardia Act has withdrawn the jurisdiction of the district court to grant the desired remedy. See *W. L. Mead, Inc.* v. *International Brotherhood of Teamsters*, 217 F. 2d 6 (1954), in which case we affirmed an order denying a temporary injunction against a strike and picketing alleged to be in breach of a collective bargaining agreement. We held that § 301 had not repealed by implication the withdrawal of jurisdiction to enjoin the activities listed in § 4 of the Norris-LaGuardia Act even in a case where such activities constitute [fol. 34] a breach of contract. The present case presents a different problem, for the activity against which relief is sought, refusal to arbitrate, can in no way be fitted into any of the classes enumerated in § 4. However, consideration must also be given to § 7 of the Norris-LaGuardia Act, the relevant parts of which are set forth in the footnote.* See

* "Sec. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any

also [ ]8 and 9. If it is not implicit in our discussion in the *Mead* case, *supra*, we now affirm that our determination there that enactment of § 301 did not by implication repeal § 4 of the Norris-LaGuardia Act applies as well to § 7 and indeed to the whole of that Act. It is in this light that one must read the dictum in the *Mead* opinion (217 F. 2d at 9) that "equitable relief may sometimes be given in terms which do not trench upon the interdictions of § 4 of the Norris-LaGuardia Act." That is, any such equitable relief to be given in a suit brought under § 301 must also not "trench upon the interdictions of" § 7, when that section [fol. 35] and the Act of which it is a part are applicable according to their own terms.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought,

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case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each items of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complaint has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided, however*, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court. . . . " (47 Stat. 71-72)

In recognition of this situation, it has sometimes been argued that a suit to remedy a breach of contract does not involve or grow out of a "labor dispute." This argument cannot be accepted, in the face of the sweeping definitions of § 13, which set the scope of the Norris-LaGuardia Act. (47 Stat. 73) Any controversy between an employer and a union "concerning terms or conditions of employment" is included, "and no less so because the dispute is one that may be resolved or determined on its merits by reference to the terms of a collective bargaining agreement." *W. L. Mead, Inc.* v. *International Brotherhood of Teamsters*, supra 217 F. 2d at 8, and cases cited; see Note, 37 Va. L. Rev. 739, 746 (1951).

Nevertheless, it is our conclusion that jurisdiction to compel arbitration is not withdrawn by the Norris-LaGuardia Act. Although the present controversy is a "labor dis-[fol. 36] pute" within the scope of the Act as defined in § 13, the relief sought is not the "temporary or permanent injunction" against whose issuance the formidable barriers

of § 7 are raised. Of course, the label used to describe the judicial command is not controlling. We would not rest by saying that an order to arbitrate is a "decree for specific performance" in contradistinction to a "mandatory injunction," for each term has been attached so frequently to this type of relief that neither can be rejected out of hand as an inappropriate characterization of it. But see 2 Pomeroy, Equitable Remedies § 2057 (2d ed. 1919). For reasons to be developed below, we believe that the "injunction" at which § 7 was aimed is the traditional "labor injunction," typically an order which prohibits or restricts unilateral coercive conduct of either party to a labor dispute. *E.g.*, *Alcoa Steamship Co., Inc.*, v. *McMahon*, 81 F. Supp. 541 (S.D. N.Y. 1948), aff'd 173 F. 2d 567 (C.A. 2d, 1949); *Associated Telephone Co., Ltd.*, v. *Communication Workers*, 114 F. Supp. 334 (S.D. Cal. 1953). An order to compel arbitration of an existing dispute, or to stay a pending lawsuit over the dispute so that arbitration may be had, as redress for one party's breach of a prior agreement to submit such disputes to arbitration, seems to have a different character, whatever name is given to it. Cf. *Sanford* v. *Boston Edison Co.*, 316 Mass. 631 (1944); *Lincoln Mills* v. *Textile Workers Union*, 230 F. 2d 81 (C.A. 5th, 1956) (arbitration order denied on other grounds).

It should be noted in passing that the Supreme Court has recently reaffirmed its ruling that an order denying a stay of an action for damages in favor of arbitration is "refusal of an 'injunction' under" 28 U.S.C. § 1292. *Baltimore Contractors, Inc.* v. *Bodinger*, 348 U.S. 176, 180 (1955). Whether the same characterization would be applied to an order affirmatively compelling arbitration need not be decided, for the *Baltimore Contractors* case and its predeces- [fol. 37] sors were treating the stay order as an "injunction" only for the purpose of determining appealability under 28 U.S.C. § 1292(1), as is obvious from the opinions. What is an "injunction" for that statutory test would seem to have little relevance to what is an "injunction" in the wholly different context of the Norris-LaGuardia Act. Cf. *Shanferoke Coal & Supply Corp.* v. *Westchester Service Corp.*, 293 U.S. 449, 452 (1935). See also *Goodall-Sanford, Inc.* v. *United Textile Workers*, No. 5029, decided today.

It is significant, while still at the verbal level, that within

the Norris-LaGuardia Act itself a distinction is made in the breadth of the bars imposed on equitable relief. The sections that might be relevant here all deny jurisdiction to issue an "injunction" (§§ 4, 5, 7, 9, 10) or "injunctive relief" (§ 8). In contrast is § 3, where the so-called "yellow dog contract" is declared to be not enforceable in the federal courts by "the granting of legal or equitable relief." Congress might have more broadly withdrawn all "equitable relief" in § 7, and its use instead of the phrase "temporary or permanent injunction," in view of the clear desire for stringency in this Act, suggests that a narrower intent was deliberate.

More significant is the fact that the Norris-LaGuardia Act has been interpreted as not even withdrawing all "injunctive relief." *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U.S. 515 (1937); *Graham* v. *Brotherhood of Locomotive Firemen*, 338 U.S. 232 (1949). Those cases might once have been explainable as resting upon special factors in the terms or history of the Railway Labor Act (45 U.S.C. §§ 151 *et seq.*), but the Supreme Court has quite recently extended the power to enjoin racial discrimination exercised in the *Graham* case to the case of a union subject to the National Labor Relations Act, apparently considering the possible differences between the two Acts as not [fol. 38] worthy of comment. *Syres* v. *Oil Workers Union*, 350 U.S. 892 (1955).

Basically, it is the language and background of the Norris-LaGuardia Act itself which point to the conclusion that the restrictions of § 7 do not have to be met as a prerequisite to jurisdiction to grant an order compelling arbitration. Section 7 requires certain preliminary allegations and findings: a threat of unlawful acts leading to substantial injury to property, greater injury to complainant in denying relief than to defendants in granting it, and the inability of the public officials charged with protection of property to furnish adequate protection. Procedural requirements include notice to said public officials and an undertaking for reimbursement by complainant and a surety. These provisions were obviously aimed to limit injunctions to cases involving violent or destructive acts. See also § 9. The enumerated requisites, which draw a logical line in relation to union conduct in strikes and

picketing (and perhaps to some employer activities), are not at all compatible with the situation where one party merely demands that the other be compelled to arbitrate a grievance in accordance with a contract provision for arbitration, in which latter situation the required findings seldom, if ever, could be made either affirmatively or negatively. They just do not sensibly apply. We do not believe Congress intended § 7 in any case to be a snare and a delusion, holding out the possibility of jurisdiction but demanding for its exercise sworn allegations of inapposite facts.

Congress had no hostility to arbitration as such, as is demonstrated by § 8 of the Norris-LaGuardia Act, which denies injunctive relief to any complainant "who has failed to make every reasonable effort to settle such dispute . . . with the aid of any available governmental machinery of mediation or voluntary arbitration." See *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R.R.*, 321 U.S. 50 [fol. 39] (1944). Indeed, the general purpose of the Act to encourage the development of free collective bargaining, while it should not be taken broadly as an argument for an interpretation excluding from the coverage of the Act all decrees for specific performance of contracts, may properly be invoked as additional support for our conclusion with respect to specific performance of the promise to arbitrate, as was done in *Wilson Bros.* v. *Textile Workers Union*, 132 F. Supp. 163 (S.D. N.Y. 1954), appeal dismissed 224 F. 2d 176 (C.A. 2d, 1955), and *Local 207* v. *Landers, Frary & Clark*, 119 F. Supp. 877 (D. Conn. 1954). See also *Virginian Ry. Co.* v. *System Federation No. 40*, supra, 300 U.S. at 563; Comment, 21 U. Chi. L. Rev. 251, 258-61 (1954).

Many of the cases dealing with demands for equitable enforcement of collective bargaining agreements have simplified the problem of the Norris-LaGuardia Act by use of what was deemed to be the appropriate label—"injunction," to deny relief, or "specific performance," to grant it —and they have tended not to distinguish between different types of equitable remedies in this regard. Therefore, we have not been persuaded by such cases denying relief as *Associated Telephone Co., Ltd.* v. *Communication Workers*, supra; *International Longshoremen's Union* v. *Libby, McNeill & Libby*, 114 F. Supp. 249, 115 F. Supp. 123 (D. Hawaii 1953), aff'd on other grounds 221 F.2d 225 (C.A. 9th, 1955.)

Nor does our conclusion rest on similar decisions granting relief, such as *Textile Workers Union* v. *Aleo Mfg. Co.*, 94 F. Supp. 626 (M.D.N.C. 1950); *Milk Drivers Union* v. *Gillespie Milk Products Corp.*, 203 F.2d 650 (C.A. 6th, 1953). Other cases, correct on their own facts, have often been cited, erroneously we think, as authority for denying equitable relief in all circumstances. *E.g.*, *Alcoa Steamship Co., Inc.* v. *McMahon, supra* (§ 4 activity, as in the *Mead* case); *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F.2d 183 (C.A. 4th, 1948) (unfair labor practice). In addition, [fol. 40] there are cases which are frequently cited in support of the grant of an equitable remedy, although they seem only to have assumed that some equitable relief could be given, without mentioning the Norris-LaGuardia Act. See *AFL* v. *Western Union Telegraph Co.*, 179 F.2d 535 (C.A. 6th, 1950); *Textile Workers Union* v. *Arista Mills Co.*, 193 F.2d 529, 534 (C.A. 4th, 1951). Also silent on the effect of the Norris-LaGuardia Act were some of the cases dealing with the United States Arbitration Act (9 U.S.C. §§ 1 *et seq.*), which will be discussed below.

Thus we do not consider that our answer to the Norris-LaGuardia problem was either foreclosed or required by prior authority. It is supported directly by a few cases, one of which, although citing opinions on which we do not rely, aptly summed up the analysis made above: "The general structure, detailed provisions, declared purposes, and legislative history of that statute [Norris-LaGuardia Act] show it has no application to cases where a mandatory injunction is sought to enforce a contract obligation to submit a controversy to arbitration under an agreement voluntarily made." *Textile Workers Union* v. *American Thread Co.*, 113 F. Supp. 137, 142 (D. Mass. 1953); cf. *Local 207* v. *Landers, Frary & Clark*, supra, 119 F.Supp. at 879; *Wilson Bros.* v. *Textile Workers Union*, supra, 132 F.Supp. at 165-66.

One final objection to our ruling should be discussed. It has been argued in these cases that no arbitration order could be given against a union under the Norris-LaGuardia Act, and therefore that the concept of mutuality of remedy requires that the same order against the employer be denied. The reply is two-fold. Our ruling herein, that an

order to compel arbitration is neither barred specifically by § 4 nor subject to the requirements of § 7, means that such an order could be granted against either party to a labor dispute without violating the Act. The same is true [fol. 41] of an order to stay a lawsuit in favor of arbitration. If the union's breach of an arbitration promise should take the form of a strike, however, our prior holding in the *Mead* case applies, so that the order to arbitrate could not be accompanied by an injunction against the strike. Continuation of the strike theoretically is not a barrier to an arbitration, although practically it may be, in some cases, either because the employer deems it unfair to arbitrate in the face of a strike or because an arbitrator will not sit in those circumstances. See Cox, "Grievance Arbitration in the Federal Courts," 67 Harv. L. Rev. 591, 603-06 (1954). But the employer is not without remedies for such a continuing breach, even thought the Norris-LaGuardia Act precludes the swift, effective injunctive remedy. See *Brotherhood of Railroad Trainmen* v. *Toledo, P. & W. R.R.*, supra; 321 U.S. at 62-63; *International Brotherhood of Teamsters* v. *W. L. Mead, Inc.*, C.A. 1st, March 6, 1956. In the second place, although the Norris-LaGuardia Act is not a "one-way street" (see S. Rep. No. 163, 72d Cong., 1st Sess. 19 (1932)), it certainly was intended and has application mainly as a protection for union and employee activities. Where its terms can be read to include employer conduct, that conduct should also be protected. See Wollett and Wellington, "Federalism and Breach of the Labor Agreement," 7 Stan. L. Rev. 445, 456 n. 59 (1955). But a realistic view of the way labor relations are carried on shows that there are few instances where this is the case. It would therefore be anomalous to read into the Act a requirement of exact mutuality of remedies, whatever force that concept may have in other contexts. Equitable relief against any party, if available under the holding of this opinion, must be molded, where necessary, to stay out of the "forbidden territory" delimited by the Norris-LaGuardia Act. Cf. *Fitzgerald* v. *Abramson*, 89 F. Supp. 504, 512 (S.D. N.Y. 1950).

[fol. 42] II

This case is not disposed of by holding that the Norris-LaGuardia Act does not negative the existence of jurisdiction, for the plaintiff cannot prevail in the end unless there is also an affirmative basis upon which to grant the remedy sought. In view of its disposition of the Norris-LaGuardia issue, the court below did not reach this question. Since it is purely a question of law, and was fully briefed and argued here, we proceed to resolve it in the first instance.

Preliminary to our task, however, is the choice of law problem: In this suit under § 301, do we look to federal or state sources to determine the availability of specific enforcement as remedy for breach of a promise to arbitrate? This is the problem largely left open by our second opinion in *International Brotherhood of Teamsters* v. *W. L. Mead, Inc.*, decided March 6, 1956, wherein we held that § 301 was a constitutional exercise of the power of Congress to confer jurisdiction on the lower federal courts, regardless of the source of the law used to resolve certain issues determinative of the merits of a § 301 case. We did suggest certain specific points, by way of illustration, as to which federal law would certainly rule the controversy, even though Congress might perhaps have chosen to leave other matters to be determined by an application of state law—a point we found it unnecessary to determine.

Of course, if § 301 created a "generally applicable and uniform federal substantive right," as well as "a remedy . . . and . . . a forum in which to enforce it," as the enactment was described in *Shirley-Herman Co., Inc.* v. *International Hod Carriers Union*, 182 F.2d 806, 809 (C.A. 2d, 1950), then there would be no question that federal law is applicable to all issues, whether deemed substantive or procedural.

If, on the other hand, a federal court in a § 301 case may have to determine at least some substantive issues by refer-[fol. 43] ence to state law—which possibly is so—then the problem of choice of law governing the "forms and mode" of enforcing an arbitration agreement must necessarily be faced. Our answer in that event is in accord with the reasoning of Judge Wyzanki in *Textile Workers Union* v. *American Thread Co.*, supra, 113 F. Supp. at 141-42, rely-

ing on "the traditional rule that the availability of specific performance is a matter not of right, but of remedy, and that like other matters of remedy it is governed by the law of the forum. *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109. . . ."

However, we must fit this conclusion into the analysis of arbitration enforcement recently made by the Supreme Court in *Bernhardt* v. *Polygraphic Co.*, 350 U.S. 198 (1956). In that case, a damage action based on a written contract for the employment of an individual that included an arbitration clause, jurisdiction was founded solely on diversity of citizenship. One issue was the applicability of the doctrine of *Erie R.R. Co.* v. *Tompkins*, 304 U.S. 64 (1938), to the question of whether the lawsuit should be stayed in favor of arbitration. The Supreme Court held that "the remedy by arbitration . . . substantially affects the cause of action created by the State," 350 U.S. at 203, thereby invoking the test of *Guaranty Trust Co.* v. *York*, 326 U.S. 99, 108-09 (1945), so that the question for that reason had to be decided according to state law, as if the district court were "only another court of the State." In our opinion the ruling in the *Bernhardt* case has no bearing on a suit under § 301. As we explained in our second opinion in the *Mead* case, *supra*, decided March 6, 1956, jurisdiction in a § 301 case is not based upon diversity of citizenship. Rather, it is based upon that provision of Art. III of the Constitution which extends the judicial power of the United States to cases "in Law and Equity, arising under . . . the Laws of the United States. . . ."

Prior to the *Erie* decision, it was well accepted that the [fol. 44] means for enforcing an arbitration agreement properly fell in the category of remedy or procedure. *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, 123-25 (1924) (state statute); *Marine Transit Corp.* v. *Dreyfus*, 284 U.S. 263, 277-79 (1943) (U.S. Arbitration Act.) The *York* case, while recognizing that such questions normally are for the forum's own law, ruled that questions otherwise classified as questions of remedy and procedure must be determined in a diversity case according to state law when they may substantially affect the outcome of the case. That opinion and its progeny down to the *Bernhardt* case have empha-

sized the special demands of the diversity jurisdiction, as explained in the *Erie* and *York* opinions, as the basis for their rulings, and have given some indications of intent to limit to diversity cases their extensive reference to state "procedural" law. *E.g.*, see *Guaranty Trust Co.* v. *York*, supra, 326 U.S. at 101; *Bernhardt* v. *Polygraphic Co.*, supra, 350 U.S. at 202-03, 208. In other cases, considerations relevant to diversity suits have been held inapplicable where federal jurisdiction rested on other grounds, so that state procedural rules were not carried over even though the case involved some use of state law, *Holmberg* v. *Armbrecht*, 327 U.S. 392 (1946), or was founded on a state cause of action for wrongful death adopted as part of the "general maritime law" enforceable in admiralty, *Levinson* v. *Deupree*, 345 U.S. 648 (1953). See *Doucette* v. *Vincent*, 194 F.2d 834, 842 n. 6 (C.A. 1st, 1952). Therefore we believe that in a § 301 case the *Erie*, *York* and *Bernhardt* decisions do not require us to apply state law concerning the "forms and mode" of enforcing an arbitration agreement.

This conclusion drawn from examination of the post-*Erie* cases is reenforced by recalling that the remedial powers of a federal court in a labor controversy are sharply restricted. The many limitations thrown up by provisions of Title 28, by the Norris-LaGuardia Act, and by § 301 itself must be [fol. 45] complied with in any event, as the first section of this opinion illustrates. Cf. *Guaranty Trust Co.* v. *York*, supra, 326 U.S. at 105. Reference in addition to state law for the availability and forms of specific enforcement would complicate and hamper the district court's observance of the limits Congress has imposed. That is especially true because the enforceability of arbitration agreements varies considerably among the states. Some grant no specific enforcement, others expressly deny it to collective bargaining contracts; many limit enforcement to agreements submitting an existing dispute, others enforce agreements to submit future disputes only if restricted to disputes that could be the subject of a lawsuit. Few states have provisions of effective scope for specific enforcement of labor arbitration promises. See Gregory and Orlikoff, "The Enforcement of Labor Arbitration Agreements," 17 U. Chi. L. Rev. 233, 240-42 (1950). In Massachusetts, it is not at all clear what

is the present status of such enforcement. See Mass. G.L. (Ter. Ed.) C. 251, § 14, *Sanford* v. *Boston Edison Co.*, 316 Mass. 631, 636 (1944); Mass. G. L. (Ter. Ed.) C. 150, § 11, *Magliozzi* v. *Handschumacher & Co.*, 327 Mass. 569 (1951); Cox, "Legal Aspects of Labor Arbitration in New England," 8 Arb. J. (N.S.) 5, 9-13 (1953).

III

This brings us to the availability and appropriateness, as a federal equitable remedy in a § 301 case, of a decree for specific performance of an agreement to arbitrate. In this connection, we do not forget the historic hostility of the judges, both at common law and in equity, to agreements for the submission of disputes to arbitration, and their manifested unwillingness to give such agreements full effect. Thus, while a valid award was enforceable at law or in equity, failure to satisfy all of the numerous formal or procedural rules would render an award invalid. Specific [fol. 46] performance of a submission to arbitration was granted if the submission had been made a rule of court or was limited to subsidiary issues in a lawsuit. But the specific enforcement of arbitration in general was barred by a pair of complementary rules that left nominal damages as the only remedy for breach of the promise to arbitrate: A submission was revocable by either party until the award was rendered; an agreement to submit future disputes to arbitration was invalid as an ouster of the jurisdiction of the courts. See Gregory and Orlikoff, *supra* at 235-38.

These rules were long embedded in the decisions of the federal, as well as state and English, courts. See *Red Cross Line* v. *Atlantic Fruit Co.*, supra, 264 U.S. at 120-23; *United States Asphalt Refining Co.* v. *Trinidad Lake Petroleum Co., Ltd.*, 222 Fed. 1006 (S.D.N.Y. 1915). A generation or more ago Congress and many state legislatures were persuaded by the advocates of arbitration to reject this body of doctrine by enacting arbitration statutes. In perhaps only two states was the change accomplished by judicial overruling of the common-law restrictions on specific enforcement. See Gregory and Orlikoff, *supra* at 254. That history convinces us that the hoary though probably misguided judge-made reluctance to give full effect to arbitra-

tion agreements cannot now be ignored by us as a matter of federal law without a pretty explicit statutory basis for so doing. But cf. *Bernhardt* v. *Polygraphic Co.*, supra, 350 U.S. at 209-12 (concurring opinion).

Practical grounds support this conclusion. A glance at a typical arbitration statute shows that it lays down procedural specifications for use of the new power to compel arbitration. Topics covered may include requisites of a submission, selection of an arbitrator, procedure and subpoena power for the arbitrator, stay and specific enforcement authority in a court, grounds and procedure for confirming or vacating an award. A court decision could over-[fol. 47] rule the common law bars to specific enforcement, but could not substitute for them the comprehensive and consistent scheme that legislative action could afford, and which is necessary for effective yet safeguarded arbitration.

A number of courts have held that § 301 itself is a legislative authorization for decrees of specific performance of arbitration agreements. *E.g.*, *Textile Workers Union* v. *Amercian Thread Co.*, supra; *Wilson Bros.* v. *Textile Workers Union*, supra; *Local 207* v. *Landers, Frary & Clark*, supra; *The Evening Star Newspaper Co.* v. *Columbia Typographical Union*, 124 F. Supp. 322 (D.D.C. 1954); cf. *Milk Drivers Union* v. *Gillespie Milk Products Corp.*, supra. We think that is reading too much into the very general language of § 301. The terms and legislative history of § 301 sufficiently demonstrate, in our view, that it was not intended either to create any new remedies or to deny applicable existing remedies. See H.R. Rep. No. 245, 80th Cong., 1st Sess., 46 (1947); H.R. Rep. No. 510 (Conference Report), 80th Cong., 1st Sess. 42 (1947); 93 Cong. Rec. 3734, 6540 (daily ed. 1947). Arbitration was scarcely mentioned at all in the legislative history. Furthermore, the same practical consideration that militates against judicial overruling of the common law doctrine applies against interpreting § 301 to give that effect. The most that could be read into it would be that it authorizes equitable remedies in general, including decrees for specific performance of an arbitration agreement. Lacking are the procedural specifications needed for administration of the power to compel arbitration. For example, in the *American Thread* case Judge Wyzanski deemed the U.S. Arbitration Act inappli-

cable, but no sooner had he ruled that § 301 authorized a decree for specific performance than he was faced with the need to adopt "as a guiding analogy" the procedure of § 5 of the U. S. Arbitration Act with respect to one such detail, the appointment of an arbitrator. 113 F. Supp. at 142. [fol. 48] Thus it seems to us that a firmer statutory basis than § 301 should be found to justify departure from the judicially formulated doctrines with reference to arbitration agreements.

## IV

The federal statute that does contain an integrated system for compelling arbitration is the United States Arbitration Act, first passed in 1925 (43 Stat. 883) and then codified and enacted into positive law as Title 9 of the U. S. Code in 1947 (61 Stat. 669), with one subsequent technical amendment (68 Stat. 1233).

The structure of the Act is as follows: Section 2, subject to definitions and an exclusion in § 1, provides that:

> "A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perfrom the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

If a suit is brought in a federal court, and the court "being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement," § 3 requires that it "shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement," providing the applicant is not in default in proceeding with the arbitration. And specific performance, the remedy sought in the instant case, is authorized in § 4 in these terms:

> [fol. 49] "A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any

> United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement."

That section goes on to detail the procedure for litigating defenses to such an order. Further details of procedure in court and before the arbitrator are given in §§ 6-8, 12-13. As already noted, § 5 provides a method for appointing an arbitrator, where necessary. Finally, §§ 9-11 state the effect of an award and detail the grounds for confirming, vacating, modifying, or correcting an award.

The heart of the Act is contained in §§ 2, 3, 4. Although each of them states its scope in different terms, it has now been authoritatively held that § 2 defines the scope of § 3, on a basis that implicitly reaches § 4, as well. *Bernhardt* v. *Polygraphic Co.*, supra, 350 U.S. at 201-02. Thus the remedy of an original action for specific performance under § 4 is available only as to an arbitration agreement contained in the types of contracts defined by § 2 as qualified by § 1.

It is not usual terminology to refer to a labor contract as "evidencing a transaction involving commerce," but the *Bernhardt* opinion suggests that under proper circumstances an individual contract of hire would meet the test of § 2. For the Court ruled § 2 inapplicable to the situation of the particular employee involved in that case by saying (350 U.S. at 200-01):

> "Nor does this contract evidence 'a transaction involving commerce' within the meaning of § 2 of the Act. There is no showing that petitioner while performing [fol. 50] his duties under the employment contract was working 'in' commerce, was producing goods for commerce, or was engaging in activity that affected commerce, within the meaning of our decisions."

If the employment contract there involved would have been subject to § 2 had such a showing been made, then a collective bargaining contract should *a fortiori* be held to be within the scope of § 2. Although it does not consummate the employment relationship, which may be the "transac-

tion," the collective agreement sets the terms and conditions under which not one but hundreds or thousands of workers are employed, and thus "involves" commerce to a greater degree than any single hiring transaction could. Cf. *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937); *J. I. Case Co.* v. *NLRB*, 321 U.S. 332 (1944). We conclude that a collective bargaining agreement may be within the terms of § 2. See Sturges and Murphy, "Some Confusing Matters Relating to Arbitration under the United States Arbitration Act," 17 Law & Contemp. Prob. 580, 617-19 (1952); Cox, "Grievance Arbitration in the Federal Courts," supra, 67 Harv. L. Rev. at 598-99. Perhaps this is not so with respect to a collective bargaining agreement whose arbitration clause is not limited to controversies "arising out of such contract or transaction, or the refusal to perform the whole or any part therof," as provided in § 2 of the Arbitration Act. See *Metal Polishers Union* v. *Rubin*, 85 F. Supp. 363 (E.D.Pa. 1949). We express no opinion on that question; the arbitration clause in suit is limited to "Any matter involving the application or interpretation of any provisions of this Agreement. . . ."

Section 2, however, must be read in connection with § 1, which, after defining "maritime transactions" and "commerce" in familiar terms, concludes with these enigmatic words:

> [fol. 51] "but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

The *Bernhardt* case indicates clearly that this exclusion pertains to the entire Act. 350 U.S. at 201-02. We have then reached the ultimate major question of this appeal: Is a collective bargaining agreement a "contract of employment" within the meaning of § 1? We hold that it is not.

The term in question admittedly is not a "word of art" with a fixed technical definition, but it seems more familiar today as an equivalent to what once was called the "contract of hire," referring to an individual transaction, rather than as a generic term that would also embrace union-negotiated collective agreements. The distinction between

the two concepts (and a suggestion of the difficulty of definition) appears in a well-known quotation from Mr. Justice Jackson's opinion for the Supreme Court in *J. I. Case Co.* v. *NLRB*, supra, 321 U.S. at 334-35:

> "Contract in labor law is a term the implications of which must be determined from the connection in which it appears. Collective bargaining between employer and the representatives of a unit, usually a union, results in an accord as to terms which will govern hiring and work and pay in that unit. The result is not, however, a *contract of employment* except in rare cases; no one has a job by reason of it and no obligation to any individual ordinarily comes into existence from it alone. The negotiations between union and management result in what often has been called a trade agreement, rather than in a *contract of employment.*" [Italics added.]

[fol. 52] Compare the language used in § 3 of the Norris-LaGuardia Act to define a "yellow dog contract," which of course would not be a union contract: "Every undertaking . . . in any contract or agreement of hiring or employment between any [employer] . . . and any employee or prospective employee. . . . " (47 Stat. 70) But see *Amalagamated Assn.* v. *Pennsylvania Greyhound Lines, Inc.*, 191 F. 2d 310, 313 (C.A. 3d, 1951), 65 Harv. L. Rev. 1239 (1952). See also Cox, "Grievance Arbitration in the Federal Courts," supra, 67 Harv. L. Rev. at 595-97.

If the words of § 1 do not have a "plain meaning," the legislative history does not conclusively make them plainer. The committee reports and hearings in the Congress which passed the Act contain only one reference—an ambiguous one—to the meaning of the exclusion. See Joint Hearings before Subcommittees of Committees on Judiciary on S. 1005 and H.R. 646, 68th Cong., 1st Sess. 21 (1924); S. Rep. 536 and H.R. Rep. 646, 68th Cong., 1st Sess. (1924) The whole tenor of these documents, however, demonstrates that congressional attention was being directed at that time solely toward the field of commercial arbitration. The history of the arbitration bill before the previous Congress and in the American Bar Association committee which had

drafted it shows that the exclusion was inserted to overcome an objection by the Seamen's Union. But even this bit of history is ambiguous as to whether the objection was made with reference to union arbitration or individual arbitration of seamen's wage disputes. Compare *Tenney Engineering, Inc.* v. *United Electrical Workers*, 207 F. 2d 450, 452 (C.A. 3d, 1953, with 65 Harv. L. Rev. 1240. When this basically weak type of legislative history is conceivably explainable on other grounds, such as objection to a new form of arbitration for seamen's individual contracts of hire (see 46 U.S.C. § 651), we cannot attribute much force to it against a reading of the statutory language itself.

[fol. 53] Court decisions are divided on the breadth of the exclusion in § 1 of the U. S. Arbitration Act. Three circuits have held that it includes collective bargaining agreements. *Amalgamated Assn.* v. *Pennsylvania Greyhound Lines, Inc.*, 192 F. 2d 310 (C.A. 3d, 1951); *United Electrical Workers* v. *Miller Metal Products, Inc.*, 215 F. 2d 221 (C.A. 4th, 1954); *Lincoln Mills* v. *Textile Workers Union*, 230 F. 2d 81 (C.A. 5th, 1956). See also *Mercury Oil Refining Co.* v. *Oil Workers Union*, 187 F. 2d 980, 983 (C.A. 10th, 1951); *Shirley-Herman Co., Inc.* v. *International Hod Carriers Union*, 182 F. 2d 806, 809 (C.A. 2d, 1950). But cf. *Markel Electric Products, Inc.* v. *United Electrical Workers*, 202 F. 2d 435 (C.A. 2d, 1953). Despite this position, the Third Circuit will apply the Act to most collective bargaining contracts, on its view that the exclusion only refers to collective agreements of transportation workers. *Tenney Engineering, Inc.* v. *United Electrical Workers*, 207 F. 2d 459 (C.A. 3d, 1953).

On the other hand, the Sixth Circuit, while denying a stay under § 3 on other grounds, has squarely ruled that the exclusion covers only a "contract for the hiring of individuals," distinguishing its earlier cases apparently as being suits for wages upon contracts of hire incorporating the terms of a collective bargaining agreement. *Hoover Motor Express Co., Inc.* v. *Teamsters Union*, 217 F. 2d 49, 52-53 (C.A. 6th, 1954). Accord, *Lewittes & Sons* v. *United Furniture Workers*, 95 F. Supp. 851 (S.D.N.Y. 1951); see *United Electrical Workers* v. *Oliver Corp.*, 205 F. 2d 376, 385 (C.A. 8th, 1953); *Wilson Bros.* v. *Textile Workers Union*, supra, 132 F. Supp. at 165 (S.D.N.Y.); *Tenney Engineering, Inc.*

v. *United Electrical Workers*, supra, 207 F. 2d at 454-55 (concurring opinion). The question was expressly passed over in the *American Thread* case, *supra*, 113 F. Supp. at 139.

With the legislative history and judicial treatment in the condition just described, we feel free to consider the statu- [fol. 54] tory provision as carrying its own full meaning in what it says. The term "contracts of employment" serves to define in part the scope of a statute which created a governing code for a newly important system of adjudicating controversies, and which has assumed permanent status by codification. It may well be that the attention of Congress was focused on the field of commercial arbitration in 1925, because the proposed legislation was being pressed by advocates of commercial arbitration. Nevertheless, in enacting the Arbitration Act, Congress chose not to use apt language to confine the application of the Act to the field of commercial arbitration. If it be assumed that only in the period subsequent to 1925 did arbitration under collective bargaining agreements emerge as a factor of major importance, the most that could be inferred from that would be that Congress did not specifically advert to arbitration under collective bargaining agreements. But such inference would not be enough to warrant an interpretation excluding collective bargaining agreements from the coverage of the Arbitration Act. It would be necessary to go further and to conclude that, had Congress in 1925 foreseen the developing importance of arbitration under collective bargaining agreements, it "would have so varied its comprehensive language as to exclude it from the operation of the act." *Puerto Rico* v. *The Shell Co.*, 302 U.S. 253, 257 (1937). There is no reason to suppose that this would have been so. Therefore, we hold that the exclusion in § 1 does not embrace collective bargaining agreements, as distinguished from individual "contracts of employment," and that the Arbitration Act applies to collective bargaining agreements within the limitations of other sections of the Act.

Some of those limitations have already been noted. Another which must be discussed is the provision of § 4 which authorizes specific enforcement of an agreement to arbitrate by a district court "which, *save for such agreement*, would

[fol. 55] have jurisdiction . . . of the subject matter of a suit arising out of the controversy between the parties. . . ." [Italics added.] *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437, 460 (1955), has sharply curtailed the subject-matter jurisdiction of federal courts under § 301 to adjudicate directly between union and employer a controversy over "terms of a collective agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee." One court has already held that if the district court is barred by the *Westinghouse* decision from granting pecuniary relief on a wage controversy, it also lacks jurisdiction, by the terms of § 4, to compel arbitration of that dispute. *Textile Workers Union v. Williamsport Textile Corp.* 136 F. Supp. 407 (M.D. Pa. 1955). However, the effect of the *Westinghouse* holding, reflected in all the opinions of the majority justices, was to eliminate from § 301 jurisdiction a complaint by a union that involves no more than a cause of action which is "peculiar in the individual benefit" or "the uniquely personal right of an employee" or which "arises from the individual contract between the employer and employee." 348 U.S. at 460, 461, 464. That holding was not aimed at any cause of action or remedy that appropriately pertains to the union as an entity, particularly one which an individual employee may have no equal power to enforce. The promise of the employer to arbitrate, which frequently is linked in the contract or in negotiations with a union no-strike pledge, seems to us to be at the forefront of the contract terms for whose breach only the union can effectively seek redress, and for whose breach § 301 should therefore still be an appropriate source of jurisdiction. Indeed, the history of litigation under § 301 shows that if cases seeking to compel an employer to arbitrate were thrown into the discard along with [fol. 56] *Westinghouse*-type cases and those barred for trenching on exclusive NLRB jurisdiction, there would be no significant use a union could make of § 301. Its terms and legislative history demonstrate that, as we have earlier said of the Norris-LaGuardia Act, it was not intended to be strictly a "one-way street." The *Westinghouse* opinions show no intent to create any such result. It seems to us therefore

that that decision is to be interpreted as denying jurisdiction over a controversy only where the union is seeking a remedy, usually a judgment for damages, which the individual employee equally could enforce in a suit on his personal cause of action. On that analysis, "Jurisdiction . . . of the subject matter of a suit arising out of the controversy" will exist so long as the union is not asking for the relief available to the individual employee, and thus the test of § 4 will be satisfied by a complaint which meets the terms of § 301 itself. Cf. *Wilson Bros. v. Textile Workers Union*, supra, 132 F. Supp. at 166.

V

The case will therefore be remanded for further proceedings under the Arbitration Act. Since our decision makes clear for the first time in this circuit that that Act is applicable, the district court should now permit the parties to amend their pleadings so as to allege, respectively, compliance with the requisites of the Act and defenses afforded by it.

We have not passed upon the question of the arbitrability of the two grievances at issue here, although counsel for defendant informed us that the Company denies that they are arbitrable under the contract. Arbitrability is a question which the district court must pass on in the first instance. By way of guidance, it may be appropriate to note here a brief comment on some general principles. The scope of an arbitration pledge is solely for the parties to [fol. 57] set, and thus the determination of whether a particular dispute is arbitrable is a problem of contract interpretation. See, *e.g.*, *International Union United Furniture Workers v. Colonial Hardwood Flooring Co., Inc.*, 168 F. 2d 33 (C.A. 4th, 1948); *Markel Electric Products, Inc. v. United Electrical Workers*, supra (majority and dissenting opinions). However, an arbitration clause, either expressly or by broadly stating its scope to include disputed interpretations of any contract term, may refer the very question of arbitrability to the arbitrator for decision. That is, just as a court has jurisdiction to determine its own jurisdiction, the arbitrator in such a case has power to interpret the scope of the arbitration terms of the contract, including questions of whether the dispute at issue is made arbitrable therein and

whether the applicant has satisfied the contract procedures prerequisite to arbitration. See *e.g., Wilson Bros.* v. *Textile Workers Union*, supra, 132 F. Supp. at 164-65; *Insurance Agents' Union* v. *Prudential Ins. Co.*, 122 F. Supp. 869, 872 (E.D.Pa. 1954). Thus the district court must first determine whether the contract in suit puts matters of arbitrability to the arbitrator or leaves them for decision by the court. If it is the latter, the court must decide such points before it can give relief under §§ 3 or 4 of the Arbitration Act. If it is the former, and the applicant's claim of arbitrability is not frivolous or patently baseless, an order can be given, with the decision on arbitrability to be made in the arbitration proceedings that follow, subject of course to §§ 10-11 of the Act. See, *e.g., Local 379* v. *Jacobs Mfg. Co.*, 120 F. Supp. 228 (D. Conn. 1953). See also *Goodall-Sanford, Inc.* v *United Textile Workers*, No 5029, decided today.

VI

Plaintiff has submitted a motion to this court, under 28 U.S.C. § 1653, to amend its complaint so as to allege diversity of citizenship between all the members of the Union [fol. 58] and defendant, no doubt as a hedge against a ruling that relief could not be granted under the law applicable to a federal question case. In view of our decision, this motion may have become moot, but it must in any event be denied, for it cannot accomplish the result intended. Rule 17(b) F.R.C.P.; *Donahue* v. *Kenney*, 327 Mass. 409 (1951); *Worthington Pump & Machinery Corp.* v. *Local 259*, 63 F. Supp. 411, 413 (D. Mass. 1945).

*The judgment of the District Court is vacated, and the case is remanded to that court for further proceedings not inconsistent with this opinion.*

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In United States Court of Appeals

Judgment—April 25, 1956

This cause came on to be heard on the record on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the District

Court is vacated, and the case is remanded to that Court for further proceedings not inconsistent with the opinion passed down this day.

By the Court: (S) Roger A. Stinchfield, Clerk.

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[fol. 59] In United States Court of Appeals

Thereafter, on May 10, 1956, mandate was stayed until further order of Court.

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Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 60] Supreme Court of the United States—October Term, 1956

No. 276

General Electric Company, Petitioner

*vs.*

Local 205, United Electrical, Radio and Machine Workers of America, (U.E.)

Order Allowing Certiorari—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Black took no part in the consideration or decision of this application.